

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0223

## SENATE BILL NO. 38

Introduced by: The Committee on Commerce at the request of the Department of Revenue  
and Regulation

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Securities Act, to repeal chapter 47-  
2 31A, and to revise certain related provisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Section 101. This Act may be cited as the Uniform Securities Act of 2002.

5 Section 2. Section 102. In this Act, unless the context otherwise requires:

6 (1) "Director," the director of securities;

7 (2) "Agent," an individual, other than a broker-dealer, who represents a broker-dealer in  
8 effecting or attempting to effect purchases or sales of securities or represents an  
9 issuer in effecting or attempting to effect purchases or sales of the issuer's securities.  
10 But a partner, officer, or director of a broker-dealer or issuer, or an individual having  
11 a similar status or performing similar functions is an agent only if the individual  
12 otherwise comes within the term. The term does not include an individual excluded  
13 by rule adopted or order issued under this Act;

14 (3) "Bank,":

15 (A) A banking institution organized under the laws of the United States;



- 1 (B) A member bank of the Federal Reserve System;
- 2 (C) Any other banking institution, whether incorporated or not, doing business
- 3 under the laws of a state or of the United States, a substantial portion of the
- 4 business of which consists of receiving deposits or exercising fiduciary powers
- 5 similar to those permitted to be exercised by national banks under the
- 6 authority of the comptroller of the currency pursuant to Section 1 of Public
- 7 Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined
- 8 by a state or federal agency having supervision over banks, and which is not
- 9 operated for the purpose of evading this Act; and
- 10 (D) A receiver, conservator, or other liquidating agent of any institution or firm
- 11 included in subparagraph (A), (B), or (C);
- 12 (4) "Broker-dealer," a person engaged in the business of effecting transactions in
- 13 securities for the account of others or for the person's own account. The term does not
- 14 include:
- 15 (A) An agent;
- 16 (B) An issuer;
- 17 (C) A bank or savings institution if its activities as broker-dealer are limited to
- 18 those specified in subsection 3(a)(4) and 3(a)(5) of the Securities Exchange
- 19 Act of 1934 (15 U.S.C. Section 78c(a)(4) and (5)), or a bank that satisfies the
- 20 conditions specified in Section 3(a)(4)(E) of the Securities Exchange Act of
- 21 1934 (15 U.S.C. 78c(a)(4));
- 22 (D) An international banking institution; or
- 23 (E) A person excluded by rule adopted or order issued under this Act;
- 24 (5) "Depository institution,"

1 (A) A bank; or

2 (B) A savings institution, trust company, credit union, or similar institution that  
3 is organized or chartered under the laws of a state or of the United States,  
4 authorized to receive deposits, and supervised and examined by an official or  
5 agency of a state or the United States if its deposits or share accounts are  
6 insured to the maximum amount authorized by statute by the Federal Deposit  
7 Insurance Corporation, the National Credit Union Share Insurance Fund, or a  
8 successor authorized by federal law. The term does not include:

9 (i) An insurance company or other organization primarily engaged in the  
10 business of insurance;

11 (ii) A Morris Plan bank; or

12 (iii) An industrial loan company;

13 (6) "Federal covered investment adviser," a person registered under the Investment  
14 Advisers Act of 1940;

15 (7) "Federal covered security," a security that is, or upon completion of a transaction will  
16 be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C.  
17 Section 77r(b)) or rules or regulations adopted pursuant to that provision;

18 (8) "Filing," the receipt under this Act of a record by the director or a designee of the  
19 director;

20 (9) "Fraud," "deceit," and "defraud," are not limited to common law deceit;

21 (10) "Guaranteed," guaranteed as to payment of all principal and all interest;

22 (11) "Institutional investor," any of the following, whether acting for itself or for others  
23 in a fiduciary capacity:

24 (A) A depository institution or international banking institution;

- 1 (B) An insurance company;
- 2 (C) A separate account of an insurance company;
- 3 (D) An investment company as defined in the Investment Company Act of 1940;
- 4 (E) A broker-dealer registered under the Securities Exchange Act of 1934;
- 5 (F) An employee pension, profit-sharing, or benefit plan if the plan has total assets  
6 in excess of ten million dollars or its investment decisions are made by a  
7 named fiduciary, as defined in the Employee Retirement Income Security Act  
8 of 1974, that is a broker-dealer registered under the Securities Exchange Act  
9 of 1934, an investment adviser registered or exempt from registration under  
10 the Investment Advisers Act of 1940, an investment adviser registered under  
11 this Act, a depository institution, or an insurance company;
- 12 (G) A plan established and maintained by a state, a political subdivision of a state,  
13 or an agency or instrumentality of a state or a political subdivision of a state  
14 for the benefit of its employees, if the plan has total assets in excess of ten  
15 million dollars or its investment decisions are made by a duly designated  
16 public official or by a named fiduciary, as defined in the Employee Retirement  
17 Income Security Act of 1974, that is a broker-dealer registered under the  
18 Securities Exchange Act of 1934, an investment adviser registered or exempt  
19 from registration under the Investment Advisers Act of 1940, an investment  
20 adviser registered under this Act, a depository institution, or an insurance  
21 company;
- 22 (H) A trust, if it has total assets in excess of ten million dollars, its trustee is a  
23 depository institution, and its participants are exclusively plans of the types  
24 identified in subparagraph (F) or (G), regardless of the size of their assets,

1           except a trust that includes as participants self-directed individual retirement  
2           accounts or similar self-directed plans;

3           (I)    An organization described in Section 501(c)(3) of the Internal Revenue Code  
4                (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar  
5                business trust, limited liability company, or partnership, not formed for the  
6                specific purpose of acquiring the securities offered, with total assets in excess  
7                of ten million dollars;

8           (J)    A small business investment company licensed by the Small Business  
9                Administration under Section 301(c) of the Small Business Investment Act of  
10              1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million  
11              dollars;

12          (K)    A private business development company as defined in Section 202(a)(22) of  
13                the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with  
14                total assets in excess of ten million dollars;

15          (L)    A federal covered investment adviser acting for its own account;

16          (M)    A qualified institutional buyer as defined in Rule 144A(a)(1), other than Rule  
17                144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R.  
18                230.144A);

19          (N)    A major United State institutional investor as defined in Rule 15a-6(b)(4)(i)  
20                adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

21          (O)    Any other person, other than an individual, of institutional character with total  
22                assets in excess of ten million dollars not organized for the specific purpose  
23                of evading this Act; or

24          (P)    Any other person specified by rule adopted or order issued under this Act;

(12) "Insurance company," a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state;

(13) "Insured," insured as to payment of all principal and all interest;

(14) "International banking institution," an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933;

(15) "Investment adviser," a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;

(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) A publisher of a bona fide newspaper, news magazine, or business or financial

1 publication of general and regular circulation;

2 (E) A federal covered investment adviser;

3 (F) A bank or savings institution;

4 (G) Any other person that is excluded by the Investment Advisers Act of 1940  
5 from the definition of investment adviser; or

6 (H) Any other person excluded by rule adopted or order issued under this Act;

7 (16) "Investment adviser representative," an individual employed by or associated with  
8 an investment adviser or federal covered investment adviser and who makes any  
9 recommendations or otherwise gives investment advice regarding securities, manages  
10 accounts or portfolios of clients, determines which recommendation or advice  
11 regarding securities should be given, provides investment advice or holds herself or  
12 himself out as providing investment advice, receives compensation to solicit, offer,  
13 or negotiate for the sale of or for selling investment advice, or supervises employees  
14 who perform any of the foregoing. The term does not include an individual who:

15 (A) Performs only clerical or ministerial acts;

16 (B) Is an agent whose performance of investment advice is solely incidental to the  
17 individual acting as an agent and who does not receive special compensation  
18 for investment advisory services;

19 (C) Is employed by or associated with a federal covered investment adviser, unless  
20 the individual has a place of business in this state as that term is defined by  
21 rule adopted under Section 203A of the Investment Advisers Act of 1940 (15  
22 U.S.C. Section 80b-3a) and is:

23 (i) An investment adviser representative as that term is defined by rule  
24 adopted under Section 203A of the Investment Advisers Act of 1940

1 (15 U.S.C. Section 80b-3a); or

2 (ii) Not a supervised person as that term is defined in Section 202(a)(25) of  
3 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25));

4 or

5 (D) Is excluded by rule adopted or order issued under this Act;

6 (17) "Issuer," a person that issues or proposes to issue a security, subject to the following:

7 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of  
8 deposit for a security, or share in an investment company without a board of  
9 directors or individuals performing similar functions is the person performing  
10 the acts and assuming the duties of depositor or manager pursuant to the trust  
11 or other agreement or instrument under which the security is issued;

12 (B) The issuer of an equipment trust certificate or similar security serving the  
13 same purpose is the person by which the property is or will be used or to  
14 which the property or equipment is or will be leased or conditionally sold or  
15 that is otherwise contractually responsible for assuring payment of the  
16 certificate;

17 (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral  
18 lease or in payments out of production under a lease, right, or royalty is the  
19 owner of an interest in the lease or in payments out of production under a  
20 lease, right, or royalty, whether whole or fractional, that creates fractional  
21 interests for the purpose of sale;

22 (18) "Nonissuer transaction" or "nonissuer distribution," a transaction or distribution not  
23 directly or indirectly for the benefit of the issuer;

24 (19) "Offer to purchase," an attempt or offer to obtain, or solicitation of an offer to sell,



a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

(20) "Person," an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(21) "Place of business," of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients;

(22) "Predecessor act," the act repealed by Section 702;

(23) "Price amendment," the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price;

(24) "Principal place of business," of a broker-dealer or an investment adviser means the

executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

(25) "Record," except in the phrases "of record," "official record," and "public record," information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(26) "Sale," includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(B) A gift of assessable stock involving an offer and sale; and

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;

(27) "Securities and Exchange Commission," the United States Securities and Exchange Commission;

(28) "Security," a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable

1 share; investment contract; voting trust certificate; certificate of deposit for a  
2 security; fractional undivided interest in oil, gas, or other mineral rights; put, call,  
3 straddle, option, or privilege on a security, certificate of deposit, or group or index  
4 of securities, including an interest therein or based on the value thereof; put, call,  
5 straddle, option, or privilege entered into on a national securities exchange relating  
6 to foreign currency; or, in general, an interest or instrument commonly known as a  
7 security; or a certificate of interest or participation in, temporary or interim certificate  
8 for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of  
9 the foregoing. The term:

10 (A) Includes both a certificated and an uncertificated security;

11 (B) Does not include an insurance or endowment policy or annuity contract under  
12 which an insurance company promises to pay a fixed sum of money either in  
13 a lump sum or periodically for life or other specified period;

14 (C) Does not include an interest in a contributory or noncontributory pension or  
15 welfare plan subject to the Employee Retirement Income Security Act of 1974;

16 (D) Includes as an investment contract an investment in a common enterprise with  
17 the expectation of profits to be derived primarily from the efforts of a person  
18 other than the investor and a common enterprise means an enterprise in which  
19 the fortunes of the investor are interwoven with those of either the person  
20 offering the investment, a third party, or other investors; and

21 (E) Includes as an investment contract, among other contracts, an interest in a  
22 limited partnership and a limited liability company and an investment in a  
23 viatical settlement or similar agreement;

24 (29) "Self-regulatory organization," a national securities exchange registered under the

Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rule-making Board established under the Securities Exchange Act of 1934;

(30) "Sign," with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process;

(31) "State," a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Section 3. Section 103. Securities Act of 1933 (15 U.S.C. Section 77a et seq.), Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79 et seq.), Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), National Housing Act (12 U.S.C. Section 1701 et seq.), Commodity Exchange Act (7 U.S.C. Section 1 et seq.), Internal Revenue Code (26 U.S.C. Section 1 et seq.), Securities Investor Protection Act of 1970 (15 U.S.C. Section 78aaa et seq.), Securities Litigation Uniform Standards Act of 1998 (112 Stat. 3227), Small Business Investment Act of 1958 (15 U.S.C. Section 661 et seq.), and Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this Act, or as later amended.

Section 4. Section 104. A reference in this Act to an agency or department of the United

1 States is also a reference to a successor agency or department.

2 Section 5. Section 105. This Act modifies, limits, and supersedes the federal Electronic  
3 Signatures in Global and National Commerce Act, but does not modify, limit, or supersede  
4 Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any  
5 of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This Act  
6 authorizes the filing of records and signatures, when specified by provisions of this Act or by  
7 a rule adopted or order issued under this Act, in a manner consistent with Section 104(a) of that  
8 act (15 U.S.C. Section 7004(a)).

9 Section 6. Section 201. The following securities are exempt from the requirements of  
10 Sections 301 through 306 and 504:

11 (1) A security, including a revenue obligation or a separate security as defined in Rule  
12 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured,  
13 or guaranteed by the United States; by a state; by a political subdivision of a state; by  
14 a public authority, agency, or instrumentality of one or more states; by a political  
15 subdivision of one or more states; or by a person controlled or supervised by and  
16 acting as an instrumentality of the United States under authority granted by the  
17 Congress; or a certificate of deposit for any of the foregoing;

18 (2) A security issued, insured, or guaranteed by a foreign government with which the  
19 United States maintains diplomatic relations, or any of its political subdivisions, if  
20 the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

21 (3) A security issued by and representing or that will represent an interest in or a direct  
22 obligation of, or be guaranteed by:

23 (A) An international banking institution;

24 (B) A banking institution organized under the laws of the United States; a member

1 bank of the Federal Reserve System; or a depository institution a substantial  
2 portion of the business of which consists or will consist of receiving deposits  
3 or share accounts that are insured to the maximum amount authorized by  
4 statute by the Federal Deposit Insurance Corporation, the National Credit  
5 Union Share Insurance Fund, or a successor authorized by federal law or  
6 exercising fiduciary powers that are similar to those permitted for national  
7 banks under the authority of the Comptroller of Currency pursuant to Section  
8 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

9 (C) Any other depository institution, unless by rule or order the director proceeds  
10 under Section 204;

11 (4) A security issued by and representing an interest in, or a debt of, or insured or  
12 guaranteed by, an insurance company authorized to do business in this state;

13 (5) A security issued or guaranteed by a railroad, other common carrier, public utility,  
14 or public utility holding company that is:

15 (A) Regulated in respect to its rates and charges by the United States or a state;

16 (B) Regulated in respect to the issuance or guarantee of the security by the United  
17 States, a state, Canada, or a Canadian province or territory; or

18 (C) A public utility holding company registered under the Public Utility Holding  
19 Company Act of 1935 or a subsidiary of such a registered holding company  
20 within the meaning of that act;

21 (6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933  
22 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security  
23 listed or approved for listing on another securities market specified by rule under this  
24 Act; a put or a call option contract; a warrant; a subscription right on or with respect

1 to such securities; or an option or similar derivative security on a security or an index  
2 of securities or foreign currencies issued by a clearing agency registered under the  
3 Securities Exchange Act of 1934 and listed or designated for trading on a national  
4 securities exchange, a facility of a national securities exchange, or a facility of a  
5 national securities association registered under the Securities Exchange Act of 1934  
6 or an offer or sale, of the underlying security in connection with the offer, sale, or  
7 exercise of an option or other security that was exempt when the option or other  
8 security was written or issued; or an option or a derivative security designated by the  
9 Securities and Exchange Commission under Section 9(b) of the Securities Exchange  
10 Act of 1934 (15 U.S.C. Section 78i(b));

11 (7) A security issued by a person organized and operated exclusively for religious,  
12 educational, benevolent, fraternal, charitable, social, athletic, or reformatory  
13 purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the  
14 net earnings of which inures to the benefit of a private stockholder or other person,  
15 or a security of a company that is excluded from the definition of an investment  
16 company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15  
17 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a  
18 note, bond, debenture, or other evidence of indebtedness issued by such a person, a  
19 rule may be adopted under this Act limiting the availability of this exemption by  
20 classifying securities, persons, and transactions, imposing different requirements for  
21 different classes, specifying with respect to paragraph (B) the scope of the exemption  
22 and the grounds for denial or suspension, and requiring an issuer:

23 (A) To file a notice specifying the material terms of the proposed offer or sale and  
24 copies of any proposed sales and advertising literature to be used and provide

1           that the exemption becomes effective if the director does not disallow the  
2           exemption within the period established by the rule;

3           (B)   To file a request for exemption authorization for which a rule under this Act  
4           may specify the scope of the exemption, the requirement of an offering  
5           statement, the filing of sales and advertising literature, the filing of consent to  
6           service of process complying with Section 611, and grounds for denial or  
7           suspension of the exemption; or

8           (C)   To register under Section 304;

9           (8)   A member's or owner's interest in, or a retention certificate or like security given in  
10          lieu of a cash patronage dividend issued by, a cooperative organized and operated as  
11          a nonprofit membership cooperative under the cooperative laws of a state, but not a  
12          member's or owner's interest, retention certificate, or like security sold to persons  
13          other than bona fide members of the cooperative; and

14          (9)   An equipment trust certificate with respect to equipment leased or conditionally sold  
15          to a person, if any security issued by the person would be exempt under this section  
16          or would be a federal covered security under Section 18(b)(1) of the Securities Act  
17          of 1933 (15 U.S.C. Section 77r(b)(1)).

18          Section 7. Section 202. The following transactions are exempt from the requirements of  
19          Sections 301 through 306 and 504:

20          (1)   An isolated nonissuer transaction, whether effected by or through a broker-dealer or  
21          not;

22          (2)   A nonissuer transaction by or through a broker-dealer registered, or exempt from  
23          registration under this Act, and a resale transaction by a sponsor of a unit investment  
24          trust registered under the Investment Company Act of 1940, in a security of a class



1 that has been outstanding in the hands of the public for at least ninety days, if, at the  
2 date of the transaction:

3 (A) The issuer of the security is engaged in business, the issuer is not in the  
4 organizational stage or in bankruptcy or receivership, and the issuer is not a  
5 blank check, blind pool, or shell company that has no specific business plan  
6 or purpose or has indicated that its primary business plan is to engage in a  
7 merger or combination of the business with, or an acquisition of, an  
8 unidentified person;

9 (B) The security is sold at a price reasonably related to its current market price;

10 (C) The security does not constitute the whole or part of an unsold allotment to,  
11 or a subscription or participation by, the broker-dealer as an underwriter of the  
12 security or a redistribution;

13 (D) A nationally recognized securities manual or its electronic equivalent  
14 designated by rule adopted or order issued under this Act or a record filed with  
15 the Securities and Exchange Commission that is publicly available contains:

16 (i) A description of the business and operations of the issuer;

17  
18 (ii) The names of the issuer's executive officers and the names of the  
19 issuer's directors, if any;

20 (iii) An audited balance sheet of the issuer as of a date within eighteen  
21 months before the date of the transaction or, in the case of a  
22 reorganization or merger when the parties to the reorganization or  
23 merger each had an audited balance sheet, a pro forma balance sheet for  
24 the combined organization; and

1 (iv) An audited income statement for each of the issuer's two immediately  
2 previous fiscal years or for the period of existence of the issuer,  
3 whichever is shorter, or, in the case of a reorganization or merger when  
4 each party to the reorganization or merger had audited income  
5 statements, a pro forma income statement; and

6 (E) Any one of the following requirements is met:

7 (i) The issuer of the security has a class of equity securities listed on a  
8 national securities exchange registered under Section 6 of the Securities  
9 Exchange Act of 1934 or designated for trading on the National  
10 Association of Securities Dealers Automated Quotation System;

11 (ii) The issuer of the security is a unit investment trust registered under the  
12 Investment Company Act of 1940;

13 (iii) The issuer of the security, including its predecessors, has been engaged  
14 in continuous business for at least three years; or

15 (iv) The issuer of the security has total assets of at least two million dollars  
16 based on an audited balance sheet as of a date within eighteen months  
17 before the date of the transaction or, in the case of a reorganization or  
18 merger when the parties to the reorganization or merger each had such  
19 an audited balance sheet, a pro forma balance sheet for the combined  
20 organization;

21 (3) A nonissuer transaction by or through a broker-dealer registered or exempt from  
22 registration under this Act in a security of a foreign issuer that is a margin security  
23 defined in regulations or rules adopted by the Board of Governors of the Federal  
24 Reserve System;

- 1       (4)   A nonissuer transaction by or through a broker-dealer registered or exempt from  
2           registration under this Act in an outstanding security if the guarantor of the security  
3           files reports with the Securities and Exchange Commission under the reporting  
4           requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15  
5           U.S.C. 78m or 78o(d));
- 6       (5)   A nonissuer transaction by or through a broker-dealer registered or exempt from  
7           registration under this Act in a security that:
- 8           (A)   Is rated at the time of the transaction by a nationally recognized statistical  
9               rating organization in one of its four highest rating categories; or
- 10          (B)   Has a fixed maturity or a fixed interest or dividend, if:
- 11               (i)   A default has not occurred during the current fiscal year or within the  
12                   three previous fiscal years or during the existence of the issuer and any  
13                   predecessor if less than three fiscal years, in the payment of principal,  
14                   interest, or dividends on the security; and
- 15               (ii)   The issuer is engaged in business, is not in the organizational stage or  
16                   in bankruptcy or receivership, and is not and has not been within the  
17                   previous twelve months a blank check, blind pool, or shell company  
18                   that has no specific business plan or purpose or has indicated that its  
19                   primary business plan is to engage in a merger or combination of the  
20                   business with, or an acquisition of, an unidentified person;
- 21       (6)   A nonissuer transaction by or through a broker-dealer registered or exempt from  
22           registration under this Act effecting an unsolicited order or offer to purchase;
- 23       (7)   A nonissuer transaction executed by a bona fide pledgee without the purpose of  
24           evading this Act;

- 1       (8)   A nonissuer transaction by a federal covered investment adviser with investments  
2           under management in excess of one hundred million dollars acting in the exercise of  
3           discretionary authority in a signed record for the account of others;
- 4       (9)   A transaction in a security, whether or not the security or transaction is otherwise  
5           exempt, in exchange for one or more bona fide outstanding securities, claims, or  
6           property interests, or partly in such exchange and partly for cash, if the terms and  
7           conditions of the issuance and exchange or the delivery and exchange and the  
8           fairness of the terms and conditions have been approved by the director after a  
9           hearing;
- 10      (10)  A transaction between the issuer or other person on whose behalf the offering is  
11           made and an underwriter, or among underwriters;
- 12      (11)  A transaction in a note, bond, debenture, or other evidence of indebtedness secured  
13           by a mortgage or other security agreement if:
  - 14           (A)   The note, bond, debenture, or other evidence of indebtedness is offered and  
15                sold with the mortgage or other security agreement as a unit;
  - 16           (B)   A general solicitation or general advertisement of the transaction is not made;  
17                and
  - 18           (C)   A commission or other remuneration is not paid or given, directly or  
19                indirectly, to a person not registered under this Act as a broker-dealer or as an  
20                agent;
- 21      (12)  A transaction by an executor, administrator of an estate, sheriff, marshal, receiver,  
22           trustee in bankruptcy, guardian, or conservator;
- 23      (13)  A sale or offer to sell to:
  - 24           (A)   An institutional investor;

1 (B) A federal covered investment adviser; or

2 (C) Any other person exempted by rule adopted or order issued under this Act;

3 (14) A sale or an offer to sell securities of an issuer, if the transaction is part of a single  
4 issue in which:

5 (A) Not more than twenty-five purchasers are present in this state during any  
6 twelve consecutive months, other than those designated in paragraph (13);

7 (B) A general solicitation or general advertising is not made in connection with the  
8 offer to sell or sale of the securities;

9 (C) A commission or other remuneration is not paid or given, directly or  
10 indirectly, to a person other than a broker-dealer registered under this Act or  
11 an agent registered under this Act for soliciting a prospective purchaser in this  
12 state; and

13 (D) The issuer reasonably believes that all the purchasers in this state, other than  
14 those designated in paragraph (13), are purchasing for investment;

15 (15) A transaction under an offer to existing security holders of the issuer, including  
16 persons that at the date of the transaction are holders of convertible securities,  
17 options, or warrants, if a commission or other remuneration, other than a standby  
18 commission, is not paid or given, directly or indirectly, for soliciting a security holder  
19 in this state;

20 (16) An offer to sell, but not a sale, of a security not exempt from registration under the  
21 Securities Act of 1933 if:

22 (A) A registration or offering statement or similar record as required under the  
23 Securities Act of 1933 has been filed, but is not effective, or the offer is made  
24 in compliance with Rule 165 adopted under the Securities Act of 1933 (17

1 C.F.R. 230.165); and

2 (B) A stop order of which the offeror is aware has not been issued against the  
3 offeror by the director or the Securities and Exchange Commission, and an  
4 audit, inspection, or proceeding that is public and that may culminate in a stop  
5 order is not known by the offeror to be pending;

6 (17) An offer to sell, but not a sale, of a security exempt from registration under the  
7 Securities Act of 1933 if:

8 (A) A registration statement has been filed under this Act, but is not effective;

9 (B) A solicitation of interest is provided in a record to offerees in compliance with  
10 a rule adopted by the director under this Act; and

11 (C) A stop order of which the offeror is aware has not been issued by the director  
12 under this Act and an audit, inspection, or proceeding that may culminate in  
13 a stop order is not known by the offeror to be pending;

14 (18) A transaction involving the distribution of the securities of an issuer to the security  
15 holders of another person in connection with a merger, consolidation, exchange of  
16 securities, sale of assets, or other reorganization to which the issuer, or its parent or  
17 subsidiary and the other person, or its parent or subsidiary, are parties;

18 (19) A rescission offer, sale, or purchase under Section 510;

19 (20) An offer or sale of a security to a person not a resident of this state and not present  
20 in this state if the offer or sale does not constitute a violation of the laws of the state  
21 or foreign jurisdiction in which the offeree or purchaser is present and is not part of  
22 an unlawful plan or scheme to evade this Act;

23 (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar  
24 employees' benefit plan, including any securities, plan interests, and guarantees

1 issued under a compensatory benefit plan or compensation contract, contained in a  
2 record, established by the issuer, its parents, its majority-owned subsidiaries, or the  
3 majority-owned subsidiaries of the issuer's parent for the participation of their  
4 employees including offers or sales of such securities to:

5 (A) Directors; general partners; trustees, if the issuer is a business trust; officers;  
6 consultants; and advisors;

7 (B) Family members who acquire such securities from those persons through gifts  
8 or domestic relations orders;

9 (C) Former employees, directors, general partners, trustees, officers, consultants,  
10 and advisors if those individuals were employed by or providing services to  
11 the issuer when the securities were offered; and

12 (D) Insurance agents who are exclusive insurance agents of the issuer, or the  
13 issuer's subsidiaries or parents, or who derive more than fifty percent of their  
14 annual income from those organizations;

15 (22) A transaction involving:

16 (A) A stock dividend or equivalent equity distribution, whether the corporation or  
17 other business organization distributing the dividend or equivalent equity  
18 distribution is the issuer or not, if nothing of value is given by stockholders or  
19 other equity holders for the dividend or equivalent equity distribution other  
20 than the surrender of a right to a cash or property dividend if each stockholder  
21 or other equity holder may elect to take the dividend or equivalent equity  
22 distribution in cash, property, or stock;

23 (B) An act incident to a judicially approved reorganization in which a security  
24 issued in exchange for one or more outstanding securities, claims, or property

1 interests, or partly in such exchange and partly for cash; or

2 (C) The solicitation of tenders of securities by an offeror in a tender offer in  
3 compliance with Rule 162 adopted under the Securities Act of 1933 (17  
4 C.F.R. 230.162); or

5 (23) A nonissuer transaction in an outstanding security by or through a broker-dealer  
6 registered or exempt from registration under this Act, if the issuer is a reporting  
7 issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or  
8 order issued under this Act; has been subject to continuous reporting requirements  
9 in the foreign jurisdiction for not less than one hundred eighty days before the  
10 transaction; and the security is listed on the foreign jurisdiction's securities exchange  
11 that has been designated by this paragraph or by rule adopted or order issued under  
12 this Act, or is a security of the same issuer that is of senior or substantially equal rank  
13 to the listed security or is a warrant or right to purchase or subscribe to any of the  
14 foregoing. For purposes of this paragraph, Canada, together with its provinces and  
15 territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc.,  
16 is a designated securities exchange. After an administrative hearing in compliance  
17 with chapter 1-26, the director, by rule adopted or order issued under this Act, may  
18 revoke the designation of a securities exchange under this paragraph, if the director  
19 finds that revocation is necessary or appropriate in the public interest and for the  
20 protection of investors.

21 Section 8. Section 203. A rule adopted or order issued under this Act may exempt a security,  
22 transaction, or offer; a rule under this Act may exempt a class of securities, transactions, or  
23 offers from any or all of the requirements of Sections 301 through 306 and 504; and an order  
24 under this Act may waive, in whole or in part, any or all of the conditions for an exemption or



offer under Sections 201 and 202. A filing required by rules adopted pursuant to this section shall include a fee of two hundred dollars, unless a fee is otherwise identified in this Act.

Section 9. Section 204. (a) Enforcement related powers. Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this Act may deny, suspend application of, condition, limit, or revoke an exemption created under Section 201(3)(C), (7) or (8) or 202 or an exemption or waiver created under Section 203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in Section 306(d) or 604 and only prospectively.

(b) Knowledge of order required. A person does not violate Section 301, 303 through 306, 504, or 510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

Section 10. Section 301. It is unlawful for a person to offer or sell a security in this state unless:

- (1) The security is a federal covered security;
- (2) The security, transaction, or offer is exempted from registration under Sections 201 through 203; or
- (3) The security is registered under this Act.

Section 11. Section 302. (a) Required filing of records. With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under Sections 201 through 203, a rule adopted or order issued under this Act may require the filing of any or all of the following records:

- (1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange

1 Commission under the Securities Act of 1933 and a consent to service of process  
2 complying with Section 611 signed by the issuer and the payment of a fee of five  
3 hundred dollars for open-end management companies with total net assets of fifty  
4 million dollars or less, or a filing fee of one thousand dollars for open-end  
5 management companies with total net assets of more than fifty million dollars but  
6 less than two hundred fifty million dollars, or a filing fee of two thousand dollars for  
7 open-end management companies with total net assets equal to or greater than two  
8 hundred fifty million dollars; two hundred and fifty dollars for closed end  
9 management companies; or a filing fee of one hundred fifty dollars for unit  
10 investment trusts. A renewal filing is required annually, including those documents  
11 that the director by rule or order may require and a fee as provided in this  
12 subparagraph a(1). An initial or renewal filing includes a separate fee for each  
13 portfolio, series, class, or other designation. An initial or renewal filing shall include  
14 the most recent financial statement showing the nets assets of each portfolio, series,  
15 class, or other designation, unless the maximum fee of two thousand dollars is paid.

16 (2) After the initial offer of the federal covered security in this state, all records that are  
17 part of an amendment to a federal registration statement filed with the Securities and  
18 Exchange Commission under the Securities Act of 1933. Any amendment that  
19 includes a name change to any filing, including any portfolio, series, class, or other  
20 designation, must include a fifty dollar filing fee for each name change of each  
21 portfolio, series, class, or other designation.

22 (b) Notice filing effectiveness and renewal. A notice filing under subsection (a) is effective  
23 for one year commencing on the later of the notice filing or the effectiveness of the offering filed  
24 with the Securities and Exchange Commission. On or before expiration, the issuer may renew

1 a notice filing by filing a copy of those records filed by the issuer with the Securities and  
2 Exchange Commission that are required by rule or order under this Act to be filed and by paying  
3 a renewal fee as set forth in subsection a(1). A previously filed consent to service of process  
4 complying with Section 611 may be incorporated by reference in a renewal. A renewed notice  
5 filing becomes effective upon the expiration of the filing being renewed.

6 (c) Notice filings for federal covered securities under Section 18(b)(4)(D). With respect to  
7 a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of  
8 1933(15 U.S.C. Section 77r(b)(4)(D)), a rule under this Act may require a notice filing by or on  
9 behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the  
10 Securities and Exchange Commission, and a consent to service of process complying with  
11 Section 611 signed by the issuer not later than fifteen days after the first sale of the federal  
12 covered security in this state and the payment of a fee of two hundred fifty dollars; and the  
13 payment of a fee of two hundred seventy five dollars for any late filing.

14 (d) Stop orders. Except with respect to a federal security under Section 18(b)(1) of the  
15 Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the director finds that there is a failure  
16 to comply with a notice or fee requirement of this section, the director may issue a stop order  
17 suspending the offer and sale of a federal covered security in this state. If the deficiency is  
18 corrected, the stop order is void as of the time of its issuance and no penalty may be imposed  
19 by the director.

20 Section 12. Section 303. (a) Registration permitted. A security for which a registration  
21 statement has been filed under the Securities Act of 1933 in connection with the same offering  
22 may be registered by coordination under this section.

23 (b) Required records. A registration statement and accompanying records under this section  
24 must contain or be accompanied by the following records in addition to the information

1 specified in Section 305 and a consent to service of process complying with Section 611:

2 (1) A copy of the latest form of prospectus filed under the Securities Act of 1933;

3 (2) A copy of the articles of incorporation and bylaws or their substantial equivalents  
4 currently in effect; a copy of any agreement with or among underwriters; a copy of  
5 any indenture or other instrument governing the issuance of the security to be  
6 registered; and a specimen, copy, or description of the security that is required by rule  
7 adopted or order issued under this Act;

8 (3) Copies of any other information or any other records filed by the issuer under the  
9 Securities Act of 1933 requested by the director; and

10 (4) An undertaking to forward each amendment to the federal prospectus, other than an  
11 amendment that delays the effective date of the registration statement, promptly after  
12 it is filed with the Securities and Exchange Commission.

13 (c) Conditions for effectiveness of registration statement. A registration statement under this  
14 section becomes effective simultaneously with or subsequent to the federal registration  
15 statement when all the following conditions are satisfied:

16 (1) A stop order under subsection (d) or Section 306 or issued by the Securities and  
17 Exchange Commission is not in effect and a proceeding is not pending against the  
18 issuer under Section 306; and

19 (2) The registration statement has been on file for at least twenty days or a shorter period  
20 provided by rule adopted or order issued under this Act.

21 (d) Notice of federal registration statement effectiveness. The registrant shall promptly  
22 notify the director in a record of the date when the federal registration statement becomes  
23 effective and the content of any price amendment and shall promptly file a record containing  
24 the price amendment. If the notice is not timely received, the director may issue a stop order,

1 without prior notice or hearing, retroactively denying effectiveness to the registration statement  
2 or suspending its effectiveness until compliance with this section. The director shall promptly  
3 notify the registrant of an order by telegram, telephone, or electronic means and promptly  
4 confirm this notice by a record. If the registrant subsequently complies with the notice  
5 requirements of this section, the stop order is void as of the date of its issuance.

6 (e) Effectiveness of registration statement. If the federal registration statement becomes  
7 effective before each of the conditions in this section is satisfied or is waived by the director,  
8 the registration statement is automatically effective under this Act when all the conditions are  
9 satisfied or waived. If the registrant notifies the director of the date when the federal registration  
10 statement is expected to become effective, the director shall promptly notify the registrant by  
11 telegram, telephone, or electronic means and promptly confirm this notice by a record,  
12 indicating whether all the conditions are satisfied or waived and whether the director intends the  
13 institution of a proceeding under Section 306. The notice by the director does not preclude the  
14 institution of such a proceeding.

15 Section 13. Section 304. (a) Registration permitted. A security may be registered by  
16 qualification under this section.

17 (b) Required records. A registration statement under this section must contain the  
18 information or records specified in Section 305, a consent to service of process complying with  
19 Section 611, and, if required by rule adopted under this Act, the following information or  
20 records:

- 21 (1) With respect to the issuer and any significant subsidiary, its name, address, and form  
22 of organization; the state or foreign jurisdiction and date of its organization; the  
23 general character and location of its business; a description of its physical properties  
24 and equipment; and a statement of the general competitive conditions in the industry

1 or business in which it is or will be engaged;

2 (2) With respect to each director and officer of the issuer, and other person having a  
3 similar status or performing similar functions, the person's name, address, and  
4 principal occupation for the previous five years; the amount of securities of the issuer  
5 held by the person as of the thirtieth day before the filing of the registration  
6 statement; the amount of the securities covered by the registration statement to which  
7 the person has indicated an intention to subscribe; and a description of any material  
8 interest of the person in any material transaction with the issuer or a significant  
9 subsidiary effected within the previous three years or proposed to be effected;

10 (3) With respect to persons covered by paragraph (2), the aggregate sum of the  
11 remuneration paid to those persons during the previous twelve months and estimated  
12 to be paid during the next twelve months, directly or indirectly, by the issuer, and all  
13 predecessors, parents, subsidiaries, and affiliates of the issuer;

14 (4) With respect to a person owning of record or owning beneficially, if known, ten  
15 percent or more of the outstanding shares of any class of equity security of the issuer,  
16 the information specified in paragraph (2) other than the person's occupation;

17 (5) With respect to a promoter, if the issuer was organized within the previous three  
18 years, the information or records specified in paragraph (2), any amount paid to the  
19 promoter within that period or intended to be paid to the promoter, and the  
20 consideration for the payment;

21 (6) With respect to a person on whose behalf any part of the offering is to be made in a  
22 nonissuer distribution, the person's name and address; the amount of securities of the  
23 issuer held by the person as of the date of the filing of the registration statement; a  
24 description of any material interest of the person in any material transaction with the

1 issuer or any significant subsidiary effected within the previous three years or  
2 proposed to be effected; and a statement of the reasons for making the offering;

3 (7) The capitalization and long term debt, on both a current and pro forma basis, of the  
4 issuer and any significant subsidiary, including a description of each security  
5 outstanding or being registered or otherwise offered, and a statement of the amount  
6 and kind of consideration, whether in the form of cash, physical assets, services,  
7 patents, goodwill, or anything else of value, for which the issuer or any subsidiary has  
8 issued its securities within the previous two years or is obligated to issue its  
9 securities;

10 (8) The kind and amount of securities to be offered; the proposed offering price or the  
11 method by which it is to be computed; any variation at which a proportion of the  
12 offering is to be made to a person or class of persons other than the underwriters,  
13 with a specification of the person or class; the basis on which the offering is to be  
14 made if otherwise than for cash; the estimated aggregate underwriting and selling  
15 discounts or commissions and finders' fees, including separately cash, securities,  
16 contracts, or anything else of value to accrue to the underwriters or finders in  
17 connection with the offering or, if the selling discounts or commissions are variable,  
18 the basis of determining them and their maximum and minimum amounts; the  
19 estimated amounts of other selling expenses, including legal, engineering, and  
20 accounting charges; the name and address of each underwriter and each recipient of  
21 a finder's fee; a copy of any underwriting or selling group agreement under which the  
22 distribution is to be made or the proposed form of any such agreement whose terms  
23 have not yet been determined; and a description of the plan of distribution of any  
24 securities that are to be offered otherwise than through an underwriter;

- 1       (9)    The estimated monetary proceeds to be received by the issuer from the offering; the  
2            purposes for which the proceeds are to be used by the issuer; the estimated amount  
3            to be used for each purpose; the order or priority in which the proceeds will be used  
4            for the purposes stated; the amounts of any funds to be raised from other sources to  
5            achieve the purposes stated; the sources of the funds; and, if a part of the proceeds  
6            is to be used to acquire property, including goodwill, otherwise than in the ordinary  
7            course of business, the names and addresses of the vendors, the purchase price, the  
8            names of any persons that have received commissions in connection with the  
9            acquisition, and the amounts of the commissions and other expenses in connection  
10          with the acquisition, including the cost of borrowing money to finance the  
11          acquisition;
- 12       (10) A description of any stock options or other security options outstanding, or to be  
13            created in connection with the offering, and the amount of those options held or to  
14            be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and  
15            by any person that holds or will hold ten percent or more in the aggregate of those  
16            options;
- 17       (11) The dates of, parties to, and general effect concisely stated of each managerial or  
18            other material contract made or to be made otherwise than in the ordinary course of  
19            business to be performed in whole or in part at or after the filing of the registration  
20            statement or that was made within the previous two years, and a copy of the contract;
- 21       (12) A description of any pending litigation, action, or proceeding to which the issuer is  
22            a party and that materially affects its business or assets, and any litigation, action, or  
23            proceeding known to be contemplated by governmental authorities;
- 24       (13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other



1 sales literature intended as of the effective date to be used in connection with the  
2 offering and any solicitation of interest used in compliance with Section 202(17)(B);

3 (14) A specimen or copy of the security being registered, unless the security is  
4 uncertificated; a copy of the issuer's articles of incorporation and bylaws or their  
5 substantial equivalents, in effect; and a copy of any indenture or other instrument  
6 covering the security to be registered;

7 (15) A signed or conformed copy of an opinion of counsel concerning the legality of the  
8 security being registered, with an English translation if it is in a language other than  
9 English, which states whether the security when sold will be validly issued, fully  
10 paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

11 (16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or  
12 other person whose profession gives authority for a statement made by the person,  
13 if the person is named as having prepared or certified a report or valuation, other than  
14 an official record, that is public, which is used in connection with the registration  
15 statement;

16 (17) A balance sheet of the issuer as of a date within four months before the filing of the  
17 registration statement; a statement of income and a statement of cash flows for each  
18 of the three fiscal years preceding the date of the balance sheet and for any period  
19 between the close of the immediately previous fiscal year and the date of the balance  
20 sheet, or for the period of the issuer's and any predecessor's existence if less than  
21 three years; and, if any part of the proceeds of the offering is to be applied to the  
22 purchase of a business, the financial statements that would be required if that  
23 business were the registrant; and

24 (18) Any additional information or records required by rule adopted or order issued under

1           this Act.

2           (c) Conditions for effectiveness of registration statement. A registration statement under this  
3   section becomes effective thirty days, or any shorter period provided by rule adopted or order  
4   issued under this Act, after the date the registration statement or the last amendment other than  
5   a price amendment is filed, if:

6           (1)   A stop order is not in effect and a proceeding is not pending under Section 306;

7           (2)   The director has not issued an order under Section 306 delaying effectiveness; and

8           (3)   The applicant or registrant has not requested that effectiveness be delayed.

9           (d) Delay of effectiveness of registration statement. The director may delay effectiveness  
10   once for not more than ninety days if the director determines the registration statement is not  
11   complete in all material respects and promptly notifies the applicant or registrant of that  
12   determination. The director may also delay effectiveness for a further period of not more than  
13   thirty days if the director determines that the delay is necessary or appropriate.

14          (e) Prospectus distribution may be required. A rule adopted or order issued under this Act  
15   may require as a condition of registration under this section that a prospectus containing a  
16   specified part of the information or record specified in subsection (b) be sent or given to each  
17   person to which an offer is made, before or concurrently, with the earliest of:

18          (1)   The first offer made in a record to the person otherwise than by means of a public  
19                  advertisement, by or for the account of the issuer or another person on whose behalf  
20                  the offering is being made or by an underwriter or broker-dealer that is offering part  
21                  of an unsold allotment or subscription taken by the person as a participant in the  
22                  distribution;

23          (2)   The confirmation of a sale made by or for the account of the person;

24          (3)   Payment pursuant to such a sale; or

(4) Delivery of the security pursuant to such a sale.

Section 14. Section 305. (a) Who may file. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this Act.

(b) Filing fee. A person filing a registration statement shall pay a filing fee as follows: On the first five hundred thousand dollars of the total proposed sale price of the securities covered by such registration, the sum of one dollar per thousand dollars. All registrations over five hundred thousand dollars, the sum of five hundred dollars, plus seventy-five cents per thousand dollars of excess over five hundred thousand dollars. The minimum fee is one hundred dollars. The maximum fee is two thousand dollars. If a registration statement is withdrawn before the effective date or a pre-effective stop order is issued under Section 306, the director shall retain the minimum fee of one hundred dollars.

(c) Status of offering. A registration statement filed under Section 303 or 304 must specify:

(1) The amount of securities to be offered in this state;

(2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) Incorporation by reference. A record filed under this Act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) Nonissuer distribution. In the case of a nonissuer distribution, information or a record may not be required under subsection (h) or Section 304, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or

1 unless it can be furnished by those persons without unreasonable effort or expense.

2 (f) Form of subscription. A rule adopted or order issued under this Act may require as a  
3 condition of registration that a security registered under this Act be sold only on a specified form  
4 of subscription or sale contract and that a signed or conformed copy of each contract be filed  
5 under this Act or preserved for a period specified by the rule or order, which may not be longer  
6 than five years.

7 (g) Effective period. Except while a stop order is in effect under Section 306, a registration  
8 statement is effective for one year after its effective date, or for any longer period designated in  
9 an order under this Act during which the security is being offered or distributed in a  
10 nonexempted transaction by or for the account of the issuer or other person on whose behalf the  
11 offering is being made or by an underwriter or broker-dealer that is still offering part of an  
12 unsold allotment or subscription taken as a participant in the distribution. For the purposes of  
13 a nonissuer transaction, all outstanding securities of the same class identified in the registration  
14 statement as a security registered under this Act are considered to be registered while the  
15 registration statement is effective. If any securities of the same class are outstanding, a  
16 registration statement may not be withdrawn until one year after its effective date. A registration  
17 statement may be withdrawn only with the approval of the director. A fee of one hundred dollars  
18 is required for any extension of registration.

19 (h) Periodic reports. While a registration statement is effective, a rule adopted or order  
20 issued under this Act may require the person that filed the registration statement to file reports,  
21 not more often than quarterly, to keep the information or other record in the registration  
22 statement reasonably current and to disclose the progress of the offering. The only fee required  
23 for filing a report under this subsection (h) is for the annual report. The annual report fee is  
24 twenty-five dollars.

(i) Post-effective amendments. A registration statement may be amended after its effective date. The post-effective amendment becomes effective when the director so orders. If a post-effective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a late registration fee of twenty five dollars and a filing fee, calculated in the manner specified in subsection (b). A post-effective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

Section 15. Section 306. (a) Stop orders. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the director finds that the order is in the public interest and that:

- (1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under Section 305(i) as of its effective date, or a report under Section 305(h), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) This Act or a rule adopted or order issued under this Act or a condition imposed under this Act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;
- (3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop

1 order or similar order issued under any federal, foreign, or state law other than this  
2 Act applicable to the offering, but the director may not institute a proceeding against  
3 an effective registration statement under this paragraph more than one year after the  
4 date of the order or injunction on which it is based, and the director may not issue an  
5 order under this paragraph on the basis of an order or injunction issued under the  
6 securities act of another state unless the order or injunction was based on conduct that  
7 would constitute, as of the date of the order, a ground for a stop order under this  
8 section;

9 (4) The issuer's enterprise or method of business includes or would include activities that  
10 are unlawful where performed;

11 (5) With respect to a security sought to be registered under Section 303, there has been  
12 a failure to comply with the undertaking required by Section 303(b)(4); or

13 (6) The applicant or registrant has not paid the filing fee, but the director shall void the  
14 order if the deficiency is corrected.

15 (b) Institution of stop order. The director may not institute a stop order proceeding against  
16 an effective registration statement on the basis of conduct or a transaction known to the director  
17 when the registration statement became effective unless the proceeding is instituted within thirty  
18 days after the registration statement became effective.

19 (c) Summary process. The director may summarily revoke, deny, postpone, or suspend the  
20 effectiveness of a registration statement pending final determination of an administrative  
21 proceeding. Upon the issuance of the order, the director shall promptly notify each person  
22 specified in subsection (d) that the order has been issued, the reasons for the revocation, denial,  
23 postponement, or suspension, and that within fifteen days after the receipt of a request in a  
24 record from the person the matter will be scheduled for a hearing. If a hearing is not requested

1 and none is ordered by the director, within thirty days after the date of service of the order, the  
2 order becomes final. If a hearing is requested or ordered, the director, after notice of and  
3 opportunity for hearing for each person subject to the order, may modify or vacate the order or  
4 extend the order until final determination.

5 (d) Procedural requirements for stop order. A stop order may not be issued under this section  
6 without:

7 (1) Appropriate notice to the applicant or registrant, the issuer, and the person on whose  
8 behalf the securities are to be or have been offered;

9 (2) An opportunity for hearing; and

10 (3) Findings of fact and conclusions of law in a record in accordance with chapter 1-26.

11 (e) Modification or vacation of stop order. The director may modify or vacate a stop order  
12 issued under this section if the director finds that the conditions that caused its issuance have  
13 changed or that it is necessary or appropriate in the public interest or for the protection of  
14 investors.

15 Section 16. Section 307. The director may waive or modify, in whole or in part, any or all  
16 of the requirements of Sections 302, 303, and 304(b) or the requirement of any information or  
17 record in a registration statement or in a periodic report filed pursuant to Section 305(h).

18 Section 17. Section 401. (a) Registration requirement. It is unlawful for a person to transact  
19 business in this state as a broker-dealer unless the person is registered under this Act as a  
20 broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

21 (b) Exemptions from registration. The following persons are exempt from the registration  
22 requirement of subsection (a):

23 (1) A broker-dealer without a place of business in this state if its only transactions  
24 effected in this state are with:

- 1 (A) The issuer of the securities involved in the transactions;
- 2 (B) A broker-dealer registered as a broker-dealer under this Act or not required to
- 3 be registered as a broker-dealer under this Act;
- 4 (C) An institutional investor;
- 5 (D) A nonaffiliated federal covered investment adviser with investments under
- 6 management in excess of one hundred million dollars acting for the account
- 7 of others pursuant to discretionary authority in a signed record;
- 8 (E) A bona fide preexisting customer whose principal place of residence is not in
- 9 this state and the person is registered as a broker-dealer under the Securities
- 10 Exchange Act of 1934 or not required to be registered under the Securities
- 11 Exchange Act of 1934 and is registered under the securities act of the state in
- 12 which the customer maintains a principal place of residence;
- 13 (F) A bona fide preexisting customer whose principal place of residence is in this
- 14 state but was not present in this state when the customer relationship was
- 15 established, if:
  - 16 (i) The broker-dealer is registered under the Securities Exchange Act of
  - 17 1934 or not required to be registered under the Securities Exchange Act
  - 18 of 1934 and is registered under the securities laws of the state in which
  - 19 the customer relationship was established and where the customer had
  - 20 maintained a principal place of residence; and
  - 21 (ii) Within forty-five days after the customer's first transaction in this state,
  - 22 the person files an application for registration as a broker-dealer in this
  - 23 state and a further transaction is not effected more than seventy-five
  - 24 days after the date on which the application is filed, or, if earlier, the



1 date on which the director notifies the person that the director has  
2 denied the application for registration or has stayed the pendency of the  
3 application for good cause;

4 (G) Not more than three customers in this state during the previous twelve months,  
5 in addition to those customers specified in subparagraphs (A) through (F) and  
6 under subparagraph (H), if the broker-dealer is registered under the Securities  
7 Exchange Act of 1934 or not required to be registered under the Securities  
8 Exchange Act of 1934 and is registered under the securities act of the state in  
9 which the broker-dealer has its principal place of business; and

10 (H) Any other person exempted by rule adopted or order issued under this Act; and

11 (2) A person that deals solely in United States government securities and is supervised  
12 as a dealer in government securities by the Board of Governors of the Federal  
13 Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance  
14 Corporation, or the Office of Thrift Supervision.

15 (c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer  
16 engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly  
17 or indirectly, to employ or associate with an individual to engage in an activity related to  
18 securities transactions in this state if the registration of the individual is suspended or revoked  
19 or the individual is barred from employment or association with a broker-dealer, an issuer, an  
20 investment adviser, or a federal covered investment adviser by an order of the director under this  
21 Act, the Securities and Exchange Commission, or a self-regulatory organization. A broker-  
22 dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and  
23 in the exercise of reasonable care could not have known, of the suspension, revocation, or bar.  
24 Upon request from a broker-dealer or issuer and for good cause, an order under this Act may

1 modify or waive, in whole or in part, the application of the prohibitions of this subsection to the  
2 broker-dealer.

3 (d) Foreign transactions. A rule adopted or order issued under this Act may permit:

4 (1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does  
5 not have a place of business in this state to effect transactions in securities with or  
6 for, or attempt to effect the purchase or sale of any securities by:

7 (A) An individual from Canada or other foreign jurisdiction who is temporarily  
8 present in this state and with whom the broker-dealer had a bona fide customer  
9 relationship before the individual entered the United States;

10 (B) An individual from Canada or other foreign jurisdiction who is present in this  
11 state and whose transactions are in a self-directed tax advantaged retirement  
12 plan of which the individual is the holder or contributor in that foreign  
13 jurisdiction; or

14 (C) An individual who is present in this state, with whom the broker-dealer  
15 customer relationship arose while the individual was temporarily or  
16 permanently a resident in Canada or the other foreign jurisdiction; and

17 (2) An agent who represents a broker-dealer that is exempt under this subsection to effect  
18 transactions in securities or attempt to effect the purchase or sale of securities in this  
19 state as permitted for a broker-dealer described in paragraph (1).

20 Section 18. Section 402. (a) Registration requirement. It is unlawful for an individual to  
21 transact business in this state as an agent unless the individual is registered under this Act as an  
22 agent or is exempt from registration as an agent under subsection (b).

23 (b) Exemptions from registration. The following individuals are exempt from the  
24 registration requirement of subsection (a):

- 1       (1)    An individual who represents a broker-dealer in effecting transactions in this state  
2            limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934  
3            (15 U.S.C. Section 78(o)(2));
- 4       (2)    An individual who represents a broker-dealer that is exempt under Section 401(b) or  
5            (d);
- 6       (3)    An individual who represents an issuer with respect to an offer or sale of the issuer's  
7            own securities or those of the issuer's parent or any of the issuer's subsidiaries, and  
8            who is not compensated in connection with the individual's participation by the  
9            payment of commissions or other remuneration based, directly or indirectly, on  
10           transactions in those securities;
- 11      (4)    An individual who represents an issuer and who effects transactions in the issuer's  
12            securities exempted by Section 202, other than Section 202(11) and (14);
- 13      (5)    An individual who represents an issuer that effects transactions solely in federal  
14            covered securities of the issuer, but an individual who effects transactions in a federal  
15            covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933  
16            (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is  
17            compensated in connection with the agent's participation by the payment of  
18            commissions or other remuneration based, directly or indirectly, on transactions in  
19            those securities;
- 20      (6)    An individual who represents a broker-dealer registered in this state under Section  
21            401(a) or exempt from registration under Section 401(b) in the offer and sale of  
22            securities for an account of a nonaffiliated federal covered investment adviser with  
23            investments under management in excess of one hundred million dollars acting for  
24            the account of others pursuant to discretionary authority in a signed record;

1       (7)    An individual who represents an issuer in connection with the purchase of the issuer's  
2               own securities;

3       (8)    An individual who represents an issuer and who restricts participation to performing  
4               clerical or ministerial acts; or

5       (9)    Any other individual exempted by rule adopted or order issued under this Act.

6       (c) Registration effective only while employed or associated. The registration of an agent  
7       is effective only while the agent is employed by or associated with a broker-dealer registered  
8       under this Act or an issuer that is offering, selling, or purchasing its securities in this state.

9       (d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer  
10       engaged in offering, selling, or purchasing securities in this state, to employ or associate with  
11       an agent who transacts business in this state on behalf of broker-dealers or issuers unless the  
12       agent is registered under subsection (a) or exempt from registration under subsection (b).

13       (e) Limit on affiliations. An individual may not act as an agent for more than one broker-  
14       dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are  
15       affiliated by direct or indirect common control or are authorized by rule or order under this Act.

16       Section 19. Section 403. (a) Registration requirement. It is unlawful for a person to transact  
17       business in this state as an investment adviser unless the person is registered under this Act as  
18       an investment adviser or is exempt from registration as an investment adviser under subsection  
19       (b).

20       (b) Exemptions from registration. The following persons are exempt from the registration  
21       requirement of subsection (a):

22       (1)    A person without a place of business in this state that is registered under the  
23               securities act of the state in which the person has its principal place of business if its  
24               only clients in this state are:

1 (A) Federal covered investment advisers, investment advisers registered under this  
2 Act, or broker-dealers registered under this Act;

3 (B) Institutional investors;

4 (C) Bona fide preexisting clients whose principal places of residence are not in  
5 this state if the investment adviser is registered under the securities act of the  
6 state in which the clients maintain principal places of residence; or

7 (D) Any other client exempted by rule adopted or order issued under this Act;

8 (2) A person without a place of business in this state if the person has had, during the  
9 preceding twelve months, not more than five clients that are resident in this state in  
10 addition to those specified under paragraph (1); or

11 (3) Any other person exempted by rule adopted or order issued under this Act.

12 (c) Limits on employment or association. It is unlawful for an investment adviser, directly  
13 or indirectly, to employ or associate with an individual to engage in an activity related to  
14 investment advice in this state if the registration of the individual is suspended or revoked or  
15 the individual is barred from employment or association with an investment adviser, federal  
16 covered investment adviser, or broker-dealer by an order under this Act, the Securities and  
17 Exchange Commission, or a self-regulatory organization, unless the investment adviser did not  
18 know, and in the exercise of reasonable care could not have known, of the suspension,  
19 revocation, or bar. Upon request from the investment adviser and for good cause, the director,  
20 by order, may waive, in whole or in part, the application of the prohibitions of this subsection  
21 to the investment adviser.

22 (d) Investment adviser representative registration required. It is unlawful for an investment  
23 adviser to employ or associate with an individual required to be registered under this Act as an  
24 investment adviser representative who transacts business in this state on behalf of the

1 investment adviser unless the individual is registered under Section 404(a) or is exempt from  
2 registration under Section 404(b).

3 Section 20. Section 404. (a) Registration requirement. It is unlawful for an individual to  
4 transact business in this state as an investment adviser representative unless the individual is  
5 registered under this Act as an investment adviser representative or is exempt from registration  
6 as an investment adviser representative under subsection (b).

7 (b) Exemptions from registration. The following individuals are exempt from the  
8 registration requirement of subsection (a):

9 (1) An individual who is employed by or associated with an investment adviser that is  
10 exempt from registration under Section 403(b) or a federal covered investment  
11 adviser that is excluded from the notice filing requirements of Section 405; and

12 (2) Any other individual exempted by rule adopted or order issued under this Act.

13 (c) Registration effective only while employed or associated. The registration of an  
14 investment adviser representative is not effective while the investment adviser representative  
15 is not employed by or associated with an investment adviser registered under this Act or a  
16 federal covered investment adviser that has made or is required to make a notice filing under  
17 Section 405.

18 (d) Limit on affiliations. An individual may transact business as an investment adviser  
19 representative for more than one investment adviser or federal covered investment adviser  
20 unless a rule adopted or order issued under this Act prohibits or limits an individual from acting  
21 as an investment adviser representative for more than one investment adviser or federal covered  
22 investment adviser.

23 (e) Limits on employment or association. It is unlawful for an individual acting as an  
24 investment adviser representative, directly or indirectly, to conduct business in this state on

1   behalf of an investment adviser or a federal covered investment adviser if the registration of the  
2   individual as an investment adviser representative is suspended or revoked or the individual is  
3   barred from employment or association with an investment adviser or a federal covered  
4   investment adviser by an order under this Act, the Securities and Exchange Commission, or a  
5   self-regulatory organization. Upon request from a federal covered investment adviser and for  
6   good cause, the director, by order issued, may waive, in whole or in part, the application of the  
7   requirements of this subsection to the federal covered investment adviser.

8       (f) Referral fees. An investment adviser registered under this Act, a federal covered  
9   investment adviser that has filed a notice under Section 405, or a broker-dealer registered under  
10   this Act is not required to employ or associate with an individual as an investment adviser  
11   representative if the only compensation paid to the individual for a referral of investment  
12   advisory clients is paid to an investment adviser registered under this Act, a federal covered  
13   investment adviser who has filed a notice under Section 405, or a broker-dealer registered under  
14   this Act with which the individual is employed or associated as an investment adviser  
15   representative.

16       Section 21. Section 405. (a) Notice filing requirement. Except with respect to a federal  
17   covered investment adviser described in subsection (b), it is unlawful for a federal covered  
18   investment adviser to transact business in this state as a federal covered investment adviser  
19   unless the federal covered investment adviser complies with subsection (c).

20       (b) Notice filing requirement not required. The following federal covered investment  
21   advisers are not required to comply with subsection (c):

22       (1)   A federal covered investment adviser without a place of business in this state if its  
23             only clients in this state are:

24             (A)   Federal covered investment advisers, investment advisers registered under this

1 Act, and broker-dealers registered under this Act;

2 (B) Institutional investors;

3 (C) Bona fide preexisting clients whose principal places of residence are not in  
4 this state; or

5 (D) Other clients specified by rule adopted or order issued under this Act;

6 (2) A federal covered investment adviser without a place of business in this state if the  
7 person has had, during the preceding twelve months, not more than five clients that  
8 are resident in this state in addition to those specified under paragraph (1); and

9 (3) Any other person excluded by rule adopted or order issued under this Act.

10 (c) Notice filing procedure. A person acting as a federal covered investment adviser, not  
11 excluded under subsection (b), shall file a notice, a consent to service of process complying with  
12 Section 611, and such records as have been filed with the Securities and Exchange Commission  
13 under the Investment Advisers Act of 1940 required by rule adopted or order issued under this  
14 Act and pay the fees specified in Section 410(e).

15 (d) Effectiveness of filing. The notice under subsection (c) becomes effective upon its filing.

16 Section 22. Section 406. (a) Application for initial registration. A person shall register as a  
17 broker-dealer, agent, investment adviser, or investment adviser representative by filing an  
18 application and a consent to service of process complying with Section 611, and paying the fee  
19 specified in Section 410 and any reasonable fees charged by the designee of the director for  
20 processing the filing. The application must contain:

21 (1) The information or record required for the filing of a uniform application; and

22 (2) Upon request by the director, any other financial or other information or record that  
23 the director determines is appropriate.

24 (b) Amendment. If the information or record contained in an application filed under



1 subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall  
2 promptly file a correcting amendment.

3 (c) Effectiveness of registration. If an order is not in effect and a proceeding is not pending  
4 under Section 412, registration becomes effective at noon on the forty-fifth day after a  
5 completed application is filed, unless the registration is denied. A rule adopted or order issued  
6 under this Act may set an earlier effective date or may defer the effective date until noon on the  
7 forty-fifth day after the filing of any amendment completing the application.

8 (d) Registration renewal. A registration is effective until midnight on December thirty-first  
9 of the year for which the application for registration is filed. Unless an order is in effect under  
10 Section 412, a registration may be automatically renewed each year by filing such records as are  
11 required by rule adopted or order issued under this Act, by paying the fee specified in Section  
12 410, and by paying costs charged by the designee of the director for processing the filings.

13 (e) Additional conditions or waivers. A rule adopted or order issued under this Act may  
14 impose such other conditions, not inconsistent with the National Securities Markets  
15 Improvement Act of 1996. An order issued under this Act may waive, in whole or in part,  
16 specific requirements in connection with registration as are in the public interest and for the  
17 protection of investors.

18 Section 23. Section 407. (a) Succession. A broker-dealer or investment adviser may succeed  
19 to the current registration of another broker-dealer or investment adviser or a notice filing of a  
20 federal covered investment adviser, and a federal covered investment adviser may succeed to  
21 the current registration of an investment adviser or notice filing of another federal covered  
22 investment adviser, by filing as a successor an application for registration pursuant to Section  
23 401 or 403 or a notice pursuant to Section 405 for the unexpired portion of the current  
24 registration or notice filing.

1       (b) Organizational change. A broker-dealer or investment adviser that changes its form of  
2 organization or state of incorporation or organization may continue its registration by filing an  
3 amendment to its registration if the change does not involve a material change in its financial  
4 condition or management. The amendment becomes effective when filed or on a date designated  
5 by the registrant in its filing. The new organization is a successor to the original registrant for  
6 the purposes of this Act. If there is a material change in financial condition or management, the  
7 broker-dealer or investment adviser shall file a new application for registration. A predecessor  
8 registered under this Act shall stop conducting its securities business other than winding down  
9 transactions and shall file for withdrawal of broker-dealer or investment adviser registration  
10 within forty-five days after filing its amendment to effect succession.

11       (c) Name change. A broker-dealer or investment adviser that changes its name may continue  
12 its registration by filing an amendment to its registration. The amendment becomes effective  
13 when filed or on a date designated by the registrant.

14       (d) Change of control. A change of control of a broker-dealer or investment adviser may be  
15 made in accordance with a rule adopted or order issued under this Act.

16       Section 24. Section 408. (a) Notice of termination. If an agent registered under this Act  
17 terminates employment by or association with a broker-dealer or issuer, or if an investment  
18 adviser representative registered under this Act terminates employment by or association with  
19 an investment adviser or federal covered investment adviser, or if either registrant terminates  
20 activities that require registration as an agent or investment adviser representative, the broker-  
21 dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a  
22 notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser,  
23 or federal covered investment adviser has not filed the notice, the registrant may do so.

24       (b) Transfer of employment or association. If an agent registered under this Act terminates

1 employment by or association with a broker-dealer registered under this Act and begins  
2 employment by or association with another broker-dealer registered under this Act; or if an  
3 investment adviser representative registered under this Act terminates employment by or  
4 association with an investment adviser registered under this Act or a federal covered investment  
5 adviser that has filed a notice under Section 405 and begins employment by or association with  
6 another investment adviser registered under this Act or a federal covered investment adviser that  
7 has filed a notice under Section 405; then upon the filing by or on behalf of the registrant, within  
8 thirty days after the termination, of an application for registration that complies with the  
9 requirement of Section 406(a) and payment of the filing fee required under Section 410, the  
10 registration of the agent or investment adviser representative is:

11 (1) Immediately effective as of the date of the completed filing, if the agent's Central  
12 Registration Depository record or successor record or the investment adviser  
13 representative's Investment Adviser Registration Depository record or successor  
14 record does not contain a new or amended disciplinary disclosure within the previous  
15 twelve months; or

16 (2) Temporarily effective as of the date of the completed filing, if the agent's Central  
17 Registration Depository record or successor record or the investment adviser  
18 representative's Investment Adviser Registration Depository record or successor  
19 record contains a new or amended disciplinary disclosure within the preceding twelve  
20 months.

21 (c) Withdrawal of temporary registration. The director may withdraw a temporary  
22 registration if there are or were grounds for discipline as specified in Section 412 and the  
23 director does so within thirty days after the filing of the application. If the director does not  
24 withdraw the temporary registration within the thirty-day period, registration becomes

1 automatically effective on the thirty-first day after filing.

2 (d) Power to prevent registration. The director may prevent the effectiveness of a transfer  
3 of an agent or investment adviser representative under subsection (b)(1) or (2) based on the  
4 public interest and the protection of investors.

5 (e) Termination of registration or application for registration. If the director determines that  
6 a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-  
7 dealer, agent, investment adviser, or investment adviser representative, or is the subject of an  
8 adjudication of incapacity or is subject to the control of a committee, conservator, or guardian,  
9 or cannot reasonably be located, a rule adopted or order issued under this Act may require the  
10 registration be canceled or terminated or the application denied. The director may reinstate a  
11 canceled or terminated registration, with or without hearing, and may make the registration  
12 retroactive.

13 Section 25. Section 409. Withdrawal of registration by a broker-dealer, agent, investment  
14 adviser, or investment adviser representative becomes effective sixty days after the filing of the  
15 application to withdraw or within any shorter period as provided by rule adopted or order issued  
16 under this Act unless a revocation or suspension proceeding is pending when the application is  
17 filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions  
18 as required by rule adopted or order issued under this Act. The director may institute a  
19 revocation or suspension proceeding under Section 412 within one year after the withdrawal  
20 became effective automatically and issue a revocation or suspension order as of the last date on  
21 which registration was effective if a proceeding is not pending.

22 Section 26. Section 410. (a) Broker-dealers. A person shall pay a fee of one hundred fifty  
23 dollars when initially filing an application for registration as a broker-dealer and a fee of one  
24 hundred fifty dollars when filing a renewal of registration as a broker-dealer. If the filing results

1 in a denial or withdrawal, the director shall retain the fee.

2 (b) Agents. The fee for an individual is one hundred twenty five dollars when filing an  
3 application for registration as an agent, a fee of one hundred twenty five dollars when filing a  
4 renewal of registration as an agent, and a fee of one hundred twenty five dollars when filing for  
5 a change of registration as an agent. If the filing results in a denial or withdrawal, the director  
6 shall retain the fee.

7 (c) Investment advisers. A person shall pay a fee of one hundred dollars when filing an  
8 application for registration as an investment adviser and a fee of one hundred dollars when filing  
9 a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal,  
10 the director shall retain the fee.

11 (d) Investment adviser representatives. The fee for an individual is fifty dollars when filing  
12 an application for registration as an investment adviser representative, a fee of fifty dollars when  
13 filing a renewal of registration as an investment adviser representative, and a fee of fifty dollars  
14 when filing a change of registration as an investment adviser representative. If the filing results  
15 in a denial or withdrawal, the director shall retain the fee.

16 (e) Federal covered investment advisers. A federal covered investment adviser required to  
17 file a notice under Section 405 shall pay an initial fee of two hundred dollars and an annual  
18 notice fee of two hundred dollars.

19 (f) Payment. A person required to pay a filing or notice fee under this section may transmit  
20 the fee through or to a designee as a rule or order provides under this Act.

21 Section 27. Section 411. (a) Financial requirements. Subject to Section 15(h) of the  
22 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h) ) or Section 222 of the Investment  
23 Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this Act  
24 may establish minimum financial requirements for broker-dealers registered or required to be

1 registered under this Act and investment advisers registered or required to be registered under  
2 this Act.

3 (b) Financial reports. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15  
4 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C.  
5 Section 80b-22), a broker-dealer registered or required to be registered under this Act and an  
6 investment adviser registered or required to be registered under this Act shall file such financial  
7 reports as are required by a rule adopted or order issued under this Act. If the information  
8 contained in a record filed under this subsection is or becomes inaccurate or incomplete in a  
9 material respect, the registrant shall promptly file a correcting amendment.

10 (c) Record keeping. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15  
11 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C.  
12 Section 80b-22):

13 (1) A broker-dealer registered or required to be registered under this Act and an  
14 investment adviser registered or required to be registered under this Act shall make  
15 and maintain the accounts, correspondence, memoranda, papers, books, and other  
16 records required by rule adopted or order issued under this Act;

17 (2) Broker-dealer records required to be maintained under paragraph (1) may be  
18 maintained in any form of data storage acceptable under Section 17(a) of the  
19 Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily  
20 accessible to the director; and

21 (3) Investment adviser records required to be maintained under paragraph (1) may be  
22 maintained in any form of data storage required by rule adopted or order issued under  
23 this Act.

24 (d) Audits or inspections. The records of a broker-dealer registered or required to be

1 registered under this Act and of an investment adviser registered or required to be registered  
2 under this Act are subject to such reasonable periodic, special, or other audits or inspections by  
3 a representative of the director, within or without this state, as the director considers necessary  
4 or appropriate in the public interest and for the protection of investors. An audit or inspection  
5 may be made at any time and without prior notice. The director may copy, and remove for audit  
6 or inspection copies of, all records the director reasonably considers necessary or appropriate  
7 to conduct the audit or inspection. The director may assess a reasonable charge for conducting  
8 an audit or inspection under this subsection.

9 (e) Custody and discretionary authority bond or insurance. Subject to Section 15(h) of the  
10 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment  
11 Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this Act  
12 may require a broker-dealer or investment adviser that has custody of or discretionary authority  
13 over funds or securities of a customer or client to obtain insurance or post a bond or other  
14 satisfactory form of security in an amount not to exceed fifty thousand dollars. The director may  
15 determine the requirements of the insurance, bond, or other satisfactory form of security.  
16 Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer  
17 registered under this Act whose net capital exceeds, or of an investment adviser registered under  
18 this Act whose minimum financial requirements exceed, the amounts required by rule or order  
19 under this Act. The insurance, bond, or other satisfactory form of security must permit an action  
20 by a person to enforce any liability on the insurance, bond, or other satisfactory form of security  
21 if instituted within the time limitations in Section 509(j)(2).

22 (f) Requirements for custody. Subject to Section 15(h) of the Securities Exchange Act of  
23 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15  
24 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer

1 except under the supervision of a broker-dealer and an investment adviser representative may  
2 not have custody of funds or securities of a client except under the supervision of an investment  
3 adviser or a federal covered investment adviser. A rule adopted or order issued under this Act  
4 may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or  
5 securities of a customer and on an investment adviser regarding custody of securities or funds  
6 of a client.

7 (g) Investment adviser brochure rule. With respect to an investment adviser registered or  
8 required to be registered under this Act, a rule adopted or order issued under this Act may  
9 require that information or other record be furnished or disseminated to clients or prospective  
10 clients in this state as necessary or appropriate in the public interest and for the protection of  
11 investors and advisory clients.

12 (h) Continuing education. A rule adopted or order issued under this Act may require an  
13 individual registered under Section 402 or 404 to participate in a continuing education program  
14 approved by the Securities and Exchange Commission and administered by a self-regulatory  
15 organization or, in the absence of such a program, a rule adopted or order issued under this Act  
16 may require continuing education for an individual registered under Section 404.

17 Section 28. Section 412. (a) Disciplinary conditions-applicants. If the director finds that the  
18 order is in the public interest and subsection (d) authorizes the action, an order issued under this  
19 Act may deny an application, or may condition or limit registration of an applicant to be a  
20 broker-dealer, agent, investment adviser, or investment adviser representative, and, if the  
21 applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person  
22 having a similar status or performing similar functions, or a person directly or indirectly in  
23 control, of the broker-dealer or investment adviser.

24 (b) Disciplinary conditions – registrants. If the director finds that the order is in the public



1 interest and subsection (d) authorizes the action, an order issued under this Act may revoke,  
2 suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer  
3 or investment adviser, of a partner, officer, director, or person having a similar status or  
4 performing similar functions, or a person directly or indirectly in control, of the broker-dealer  
5 or investment adviser. However, the director may not:

6 (1) Institute a revocation or suspension proceeding under this subsection based on an  
7 order issued under a law of another state that is reported to the director or a designee  
8 of the director more than one year after the date of the order on which it is based; or

9 (2) Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued  
10 under the securities act of another state unless the other order was based on conduct  
11 for which subsection (d) would authorize the action had the conduct occurred in this  
12 state.

13 (c) Disciplinary penalties – registrants. If the director finds that the order is in the public  
14 interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action,  
15 an order under this Act may censure, impose a bar, or impose a civil penalty in an amount not  
16 to exceed a maximum of ten thousand dollars per violation, on a registrant, and, if the registrant  
17 is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar  
18 status or performing similar functions, or a person directly or indirectly in control, of the broker-  
19 dealer or investment adviser.

20 (d) Grounds for discipline. A person may be disciplined under subsections (a) through (c)  
21 if the person:

22 (1) Has filed an application for registration in this state under this Act or the predecessor  
23 act within the previous ten years, which, as of the effective date of registration or as  
24 of any date after filing in the case of an order denying effectiveness, was incomplete

1 in any material respect or contained a statement that, in light of the circumstances  
2 under which it was made, was false or misleading with respect to a material fact;

3 (2) Willfully violated or willfully failed to comply with this Act or the predecessor act  
4 or a rule adopted or order issued under this Act or the predecessor act within the  
5 previous ten years;

6 (3) Has been convicted of a felony or within the previous ten years has been convicted  
7 of a misdemeanor involving a security, a commodity future or option contract, or an  
8 aspect of a business involving securities, commodities, investments, franchises,  
9 insurance, banking, or finance;

10 (4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted  
11 by the director under this Act or the predecessor act, a state, the Securities and  
12 Exchange Commission, or the United States from engaging in or continuing an act,  
13 practice, or course of business involving an aspect of a business involving securities,  
14 commodities, investments, franchises, insurance, banking, or finance;

15 (5) Is the subject of an order, issued after notice and opportunity for hearing by:

16 (A) The securities, depository institution, insurance, or other financial services  
17 regulator of a state or by the Securities and Exchange Commission or other  
18 federal agency denying, revoking, barring, or suspending registration as a  
19 broker-dealer, agent, investment adviser, federal covered investment adviser,  
20 or investment adviser representative;

21 (B) The securities regulator of a state or the Securities and Exchange Commission  
22 against a broker-dealer, agent, investment adviser, investment adviser  
23 representative, or federal covered investment adviser;

24 (C) The Securities and Exchange Commission or a self-regulatory organization

1                   suspending or expelling the registrant from membership in the self-regulatory  
2                   organization;

3                   (D)   A court adjudicating a United States Postal Service fraud order;

4                   (E)   The insurance regulator of a state denying, suspending, or revoking  
5                   registration as an insurance agent; or

6                   (F)   A depository institution regulator suspending or barring the person from the  
7                   depository institution business;

8           (6)   Is the subject of an adjudication or determination, after notice and opportunity for  
9                   hearing, by the Securities and Exchange Commission, the Commodity Futures  
10                  Trading Commission; the Federal Trade Commission; a federal depository institution  
11                  regulator, or a depository institution, insurance, or other financial services regulator  
12                  of a state that the person willfully violated the Securities Act of 1933, the Securities  
13                  Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment  
14                  Company Act of 1940, or the Commodity Exchange Act, the securities or  
15                  commodities law of a state, or a federal or state law under which a business involving  
16                  investments, franchises, insurance, banking, or finance is regulated;

17          (7)   Is insolvent, either because the person's liabilities exceed the person's assets or  
18                  because the person cannot meet the person's obligations as they mature, but the  
19                  director may not enter an order against an applicant or registrant under this paragraph  
20                  without a finding of insolvency as to the applicant or registrant;

21          (8)   Refuses to allow or otherwise impedes the director from conducting an audit or  
22                  inspection under Section 411(d) or refuses access to a registrant's office to conduct  
23                  an audit or inspection under Section 411(d);

24          (9)   Has failed to reasonably supervise an agent, investment adviser representative, or

1 other individual, if the agent, investment adviser representative, or other individual  
2 was subject to the person's supervision and committed a violation of this Act or the  
3 predecessor act or a rule adopted or order issued under this Act or the predecessor act  
4 within the previous ten years;

5 (10) Has not paid the proper filing fee within thirty days after having been notified by the  
6 director of a deficiency, but the director shall vacate an order under this paragraph  
7 when the deficiency is corrected;

8 (11) After notice and opportunity for a hearing, has been found within the previous ten  
9 years:

10 (A) By a court of competent jurisdiction to have willfully violated the laws of a  
11 foreign jurisdiction under which the business of securities, commodities,  
12 investment, franchises, insurance, banking, or finance is regulated;

13 (B) To have been the subject of an order of a securities regulator of a foreign  
14 jurisdiction denying, revoking, or suspending the right to engage in the  
15 business of securities as a broker-dealer, agent, investment adviser, investment  
16 adviser representative, or similar person; or

17 (C) To have been suspended or expelled from membership by or participation in  
18 a securities exchange or securities association operating under the securities  
19 laws of a foreign jurisdiction;

20 (12) Is the subject of a cease and desist order issued by the Securities and Exchange  
21 Commission or issued under the securities, commodities, investment, franchise,  
22 banking, finance, or insurance laws of a state;

23 (13) Has engaged in dishonest or unethical practices in the securities, commodities,  
24 investment, franchise, banking, finance, or insurance business within the previous ten

1           years; or

2           (14) Is not qualified on the basis of factors such as training, experience, and knowledge  
3           of the securities business. However, in the case of an application by an agent for a  
4           broker-dealer that is a member of a self-regulatory organization or by an individual  
5           for registration as an investment adviser representative, a denial order may not be  
6           based on this paragraph if the individual has successfully completed all examinations  
7           required by subsection (e). The director may require an applicant for registration  
8           under Section 402 or 404 who has not been registered in a state within the two years  
9           preceding the filing of an application in this state to successfully complete an  
10          examination.

11          (e) Examinations. A rule adopted or order issued under this Act may require that an  
12          examination, including an examination developed or approved by an organization of securities  
13          regulators, be successfully completed by a class of individuals or all individuals. An order  
14          issued under this Act may waive, in whole or in part, an examination as to an individual and a  
15          rule adopted under this Act may waive, in whole or in part, an examination as to a class of  
16          individuals if the director determines that the examination is not necessary or appropriate in the  
17          public interest and for the protection of investors.

18          (f) Summary process. The director may suspend or deny an application summarily; restrict,  
19          condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a  
20          registrant before final determination of an administrative proceeding. Upon the issuance of an  
21          order, the director shall promptly notify each person subject to the order that the order has been  
22          issued, the reasons for the action, and that within fifteen days after the receipt of a request in a  
23          record from the person the matter will be scheduled for a hearing. If a hearing is not requested  
24          and none is ordered by the director within thirty days after the date of service of the order, the

1 order becomes final by operation of law. If a hearing is requested or ordered, the director, after  
2 notice of and opportunity for hearing to each person subject to the order, may modify or vacate  
3 the order or extend the order until final determination.

4 (g) Procedural requirements. An order issued may not be issued under this section, except  
5 under subsection (f), without:

6 (1) Appropriate notice to the applicant or registrant;

7 (2) Opportunity for hearing; and

8 (3) Findings of fact and conclusions of law in a record in accordance with chapter 1-26.

9 (h) Control person liability. A person that controls, directly or indirectly, a person not in  
10 compliance with this section may be disciplined by order of the director under subsections (a)  
11 through (c) to the same extent as the noncomplying person, unless the controlling person did not  
12 know, and in the exercise of reasonable care could not have known, of the existence of conduct  
13 that is a ground for discipline under this section.

14 (i) Limit on investigation or proceeding. The director may not institute a proceeding under  
15 subsection(a), (b), or (c) based solely on material facts actually known by the director unless an  
16 investigation or the proceeding is instituted within one year after the director actually acquires  
17 knowledge of the material facts.

18 Section 29. Section 501. It is unlawful for a person, in connection with the offer, sale, or  
19 purchase of a security, directly or indirectly:

20 (1) To employ a device, scheme, or artifice to defraud;

21 (2) To make an untrue statement of a material fact or to omit to state a material fact  
22 necessary in order to make the statements made, in light of the circumstances under  
23 which they were made, not misleading; or

24 (3) To engage in an act, practice, or course of business that operates or would operate as

1 a fraud or deceit upon another person.

2 Section 30. Section 502. (a) Fraud in providing investment advice. It is unlawful for a person  
3 that advises others for compensation, either directly or indirectly or through publications or  
4 writings, as to the value of securities or the advisability of investing in, purchasing, or selling  
5 securities or that, for compensation and as part of a regular business, issues or promulgates  
6 analyses or reports relating to securities:

7 (1) To employ a device, scheme, or artifice to defraud another person; or

8 (2) To engage in an act, practice, or course of business that operates or would operate as  
9 a fraud or deceit upon another person.

10 (b) Rules defining fraud. A rule adopted under this Act may define an act, practice, or course  
11 of business of an investment adviser or an investment adviser representative, other than a  
12 supervised person of a federal covered investment adviser, as fraudulent, deceptive, or  
13 manipulative, and prescribe means reasonably designed to prevent investment advisers and  
14 investment adviser representatives, other than supervised persons of a federal covered  
15 investment adviser, from engaging in acts, practices, and courses of business defined as  
16 fraudulent, deceptive, or manipulative.

17 (c) Rules specifying contents of advisory contract. A rule adopted under this Act may  
18 specify the contents of an investment advisory contract entered into, extended, or renewed by  
19 an investment adviser.

20 Section 31. Section 503. (a) Civil. In a civil action or administrative proceeding under this  
21 Act, a person claiming an exemption, exception, preemption, or exclusion has the burden to  
22 prove the applicability of the claim.

23 (b) Criminal. In a criminal proceeding under this Act, a person claiming an exemption,  
24 exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

1       Section 32. Section 504. (a) Filing requirement. Except as otherwise provided in subsection  
2       (b), a rule adopted or order issued under this Act may require the filing of a prospectus,  
3       pamphlet, circular, form letter, advertisement, sales literature, or other advertising record  
4       relating to a security or investment advice, addressed or intended for distribution to prospective  
5       investors, including clients or prospective clients of a person registered or required to be  
6       registered as an investment adviser under this Act.

7       (b) Excluded communications. This section does not apply to sales and advertising literature  
8       specified in subsection (a) which relates to a federal covered security, a federal covered  
9       investment adviser, or a security or transaction exempted by Section 201, 202, or 203 except as  
10      required pursuant to Section 201(7).

11      Section 33. Section 505. It is unlawful for a person to make or cause to be made, in a record  
12      that is used in an action or proceeding or filed under this Act, a statement that, at the time and  
13      in the light of the circumstances under which it is made, is false or misleading in a material  
14      respect, or, in connection with the statement, to omit to state a material fact necessary to make  
15      the statement made, in the light of the circumstances under which it was made, not false or  
16      misleading.

17      Section 34. Section 506. The filing of an application for registration, a registration  
18      statement, a notice filing under this Act, the registration of a person, the notice filing by a  
19      person, or the registration of a security under this Act does not constitute a finding by the  
20      director that a record filed under this Act is true, complete, and not misleading. The filing or  
21      registration or the availability of an exemption, exception, preemption, or exclusion for a  
22      security or a transaction does not mean that the director has passed upon the merits or  
23      qualifications of, or recommended or given approval to, a person, security, or transaction. It is  
24      unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer



1 or client a representation inconsistent with this section.

2 Section 35. Section 507. A broker-dealer, agent, investment adviser, federal covered  
3 investment adviser, or investment adviser representative is not liable to another broker-dealer,  
4 agent, investment adviser, federal covered investment adviser, or investment adviser  
5 representative for defamation relating to a statement that is contained in a record required by the  
6 director, or designee of the director, the Securities and Exchange Commission, or a self-  
7 regulatory organization, unless the person knew, or should have known at the time that the  
8 statement was made, that it was false in a material respect or the person acted in reckless  
9 disregard of the statement's truth or falsity.

10 Section 36. Section 508. (a) Criminal penalties. It is a class four felony for any person that  
11 willfully violates this Act, or a rule adopted or order issued under this Act, except Section 504  
12 or the notice filing requirements of Section 302 or 405, or that willfully violates Section 505  
13 knowing the statement made to be false or misleading in a material respect, upon conviction,  
14 shall be fined not more than ten thousand dollars per violation. An individual convicted of  
15 violating a rule or order under this Act may be fined, but may not be imprisoned, if the  
16 individual did not have knowledge of the rule or order. A subsequent violation is a Class 3  
17 felony.

18 (b) Criminal reference not required. The Attorney General or the proper prosecuting attorney  
19 with or without a reference from the director, may institute criminal proceedings under this Act.

20 (c) No limitation on other criminal enforcement. This Act does not limit the power of this  
21 state to punish a person for conduct that constitutes a crime under other laws of this state.

22 Section 37. Section 509. (a) Securities Litigation Uniform Standards Act. Enforcement of  
23 civil liability under this section is subject to the Securities Litigation Uniform Standards Act of  
24 1998.

1 (b) Liability of seller to purchaser. A person is liable to the purchaser if the person sells a  
2 security in violation of Section 301 or, by means of an untrue statement of a material fact or an  
3 omission to state a material fact necessary in order to make the statement made, in light of the  
4 circumstances under which it is made, not misleading, the purchaser not knowing the untruth  
5 or omission and the seller not sustaining the burden of proof that the seller did not know and,  
6 in the exercise of reasonable care, could not have known of the untruth or omission. An action  
7 under this subsection is governed by the following:

8 (1) The purchaser may maintain an action to recover the consideration paid for the  
9 security, less the amount of any income received on the security, and interest at  
10 Category D, § 54-3-16 from the date of the purchase, costs, and reasonable attorneys'  
11 fees determined by the court, upon the tender of the security, or for actual damages  
12 as provided in paragraph (3).

13 (2) The tender referred to in paragraph (1) may be made any time before entry of  
14 judgment. Tender requires only notice in a record of ownership of the security and  
15 willingness to exchange the security for the amount specified. A purchaser that no  
16 longer owns the security may recover actual damages as provided in paragraph (3).

17 (3) Actual damages in an action arising under this subsection are the amount that would  
18 be recoverable upon a tender less the value of the security when the purchaser  
19 disposed of it, and interest at Category D § 54-3-16 from the date of the purchase,  
20 costs, and reasonable attorneys' fees determined by the court.

21 (c) Liability of purchaser to seller. A person is liable to the seller if the person buys a  
22 security by means of an untrue statement of a material fact or omission to state a material fact  
23 necessary in order to make the statement made, in light of the circumstances under which it is  
24 made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not

1 sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable  
2 care, could not have known of the untruth or omission. An action under this subsection is  
3 governed by the following:

4 (1) The seller may maintain an action to recover the security, and any income received  
5 on the security, costs, and reasonable attorneys' fees determined by the court, upon  
6 the tender of the purchase price, or for actual damages as provided in paragraph (3).

7 (2) The tender referred to in paragraph (1) may be made any time before entry of  
8 judgment. Tender requires only notice in a record of the present ability to pay the  
9 amount tendered and willingness to take delivery of the security for the amount  
10 specified. If the purchaser no longer owns the security, the seller may recover actual  
11 damages as provided in paragraph (3).

12 (3) Actual damages in an action arising under this subsection are the difference between  
13 the price at which the security was sold and the value the security would have had at  
14 the time of the sale in the absence of the purchaser's conduct causing liability, and  
15 interest at Category D § 54-3-16 from the date of the sale of the security, costs, and  
16 reasonable attorneys' fees determined by the court.

17 (d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or  
18 agent that sells or buys a security in violation of Section 401(a), 402(a), or 506 is liable to the  
19 customer. The customer, if a purchaser, may maintain an action for recovery of actual damages  
20 as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in  
21 subsections (c)(1) through (3).

22 (e) Liability of unregistered investment adviser and investment adviser representative. A  
23 person acting as an investment adviser or investment adviser representative that provides  
24 investment advice for compensation in violation of Section 403(a), 404(a), or 506 is liable to

1 the client. The client may maintain an action to recover the consideration paid for the advice,  
2 interest at Category D § 54-3-16 from the date of payment, costs, and reasonable attorneys' fees  
3 determined by the court.

4 (f) Liability for investment advice. A person that receives directly or indirectly any  
5 consideration for providing investment advice to another person and that employs a device,  
6 scheme, or artifice to defraud the other person or engages in an act, practice, or course of  
7 business that operates or would operate as a fraud or deceit on the other person, is liable to the  
8 other person. An action under this subsection is governed by the following:

9 (1) The person defrauded may maintain an action to recover the consideration paid for  
10 the advice and the amount of any actual damages caused by the fraudulent conduct,  
11 interest at Category D § 54-3-16 from the date of the fraudulent conduct, costs, and  
12 reasonable attorneys' fees determined by the court, less the amount of any income  
13 received as a result of the fraudulent conduct.

14 (2) This subsection does not apply to a broker-dealer or its agents if the investment  
15 advice provided is solely incidental to transacting business as a broker-dealer and no  
16 special compensation is received for the investment advice.

17 (g) Joint and several liability. The following persons are liable jointly and severally with and  
18 to the same extent as persons liable under subsections (b) through (f):

19 (1) A person that directly or indirectly controls a person liable under subsections (b)  
20 through (f), unless the controlling person sustains the burden of proof that the person  
21 did not know, and in the exercise of reasonable care could not have known, of the  
22 existence of conduct by reason of which the liability is alleged to exist;

23 (2) An individual who is a managing partner, executive officer, or director of a person  
24 liable under subsections (b) through (f), including an individual having a similar

status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) An individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) Right of contribution. A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) Survival of cause of action. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) Statute of limitations. A person may not obtain relief:

(1) Under subsection (b) for violation of Section 301, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or

(2) Under subsection (b), other than for violation of Section 301, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

1 (k) No enforcement of violative contract. A person that has made, or has engaged in the  
2 performance of, a contract in violation of this Act or a rule adopted or order issued under this  
3 Act, or that has acquired a purported right under the contract with knowledge of conduct by  
4 reason of which its making or performance was in violation of this Act, may not base an action  
5 on the contract.

6 (l) No contractual waiver. A condition, stipulation, or provision binding a person purchasing  
7 or selling a security or receiving investment advice to waive compliance with this Act or a rule  
8 adopted or order issued under this Act is void.

9 (m) Survival of other rights or remedies. The rights and remedies provided by this Act are  
10 in addition to any other rights or remedies that may exist, but this Act does not create a cause  
11 of action not specified in this section or Section 411(e).

12 Section 38. Section 510. A purchaser, seller, or recipient of investment advice may not  
13 maintain an action under Section 509 if:

14 (1) The purchaser, seller, or recipient of investment advice receives in a record, before  
15 the action is instituted:

16 (A) An offer stating the respect in which liability under Section 509 may have  
17 arisen and fairly advising the purchaser, seller, or recipient of investment  
18 advice of that person's rights in connection with the offer, and any financial or  
19 other information necessary to correct all material misrepresentations or  
20 omissions in the information that was required by this Act to be furnished to  
21 that person at the time of the purchase, sale, or investment advice;

22 (B) If the basis for relief under this section may have been a violation of Section  
23 509(b), an offer to repurchase the security for cash, payable on delivery of the  
24 security, equal to the consideration paid, and interest at Category D § 54-3-16

1 from the date of the purchase, less the amount of any income received on the  
2 security, or, if the purchaser no longer owns the security, an offer to pay the  
3 purchaser upon acceptance of the offer damages in an amount that would be  
4 recoverable upon a tender, less the value of the security when the purchaser  
5 disposed of it, and interest at Category D § 54-3-16 from the date of the  
6 purchase in cash equal to the damages computed in the manner provided in  
7 this subsection;

8 (C) If the basis for relief under this section may have been a violation of Section  
9 509(c), an offer to tender the security, on payment by the seller of an amount  
10 equal to the purchase price paid, less income received on the security by the  
11 purchaser and interest at Category D § 54-3-16 from the date of the sale; or if  
12 the purchaser no longer owns the security, an offer to pay the seller upon  
13 acceptance of the offer, in cash, damages in the amount of the difference  
14 between the price at which the security was purchased and the value the  
15 security would have had at the time of the purchase in the absence of the  
16 purchaser's conduct that may have caused liability and interest at Category D  
17 § 54-3-16 from the date of the sale;

18 (D) If the basis for relief under this section may have been a violation of Section  
19 509(d); and if the customer is a purchaser, an offer to pay as specified in  
20 subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as  
21 specified in subparagraph (C);

22 (E) If the basis for relief under this section may have been a violation of Section  
23 509(e), an offer to reimburse in cash the consideration paid for the advice and  
24 interest at Category D § 54-3-16 from the date of payment; or

1 (F) If the basis for relief under this section may have been a violation of Section  
2 509(f), an offer to reimburse in cash the consideration paid for the advice, the  
3 amount of any actual damages that may have been caused by the conduct, and  
4 interest at Category D § 54-3-16 from the date of the violation causing the  
5 loss;

6 (2) The offer under paragraph (1) states that it must be accepted by the purchaser, seller,  
7 or recipient of investment advice within thirty days after the date of its receipt by the  
8 purchaser, seller, or recipient of investment advice or any shorter period, of not less  
9 than three days, that the director, by order, specifies;

10 (3) The offeror has the present ability to pay the amount offered or to tender the security  
11 under paragraph (1);

12 (4) The offer under paragraph (1) is delivered to the purchaser, seller, or recipient of  
13 investment advice, or sent in a manner that ensures receipt by the purchaser, seller,  
14 or recipient of investment advice; and

15 (5) The purchaser, seller, or recipient of investment advice that accepts the offer under  
16 paragraph (1) in a record within the period specified under paragraph (2) is paid in  
17 accordance with the terms of the offer.

18 Section 39. Section 601. (a) Administration. This Act shall be administered by the director.

19 (b) The director shall designate one of his employees to administer the provisions of this Act  
20 in the event of his absence or disability.

21 (c) This Act shall be administered under the direction and supervision of the Department of  
22 Revenue and Regulation and the secretary thereof, but shall retain the quasi-judicial, quasi-  
23 legislative, advisory, and other nonadministrative functions, as defined in § 1-32-1, otherwise  
24 vested in it and shall exercise those functions independently of the secretary of the Department



1 of Revenue and Regulation.

2 (d) The director shall be appointed by the secretary of the Department of Revenue and  
3 Regulation and may be removed at the pleasure of the secretary. The appointment and removal  
4 of the director shall be subject to approval by the Governor.

5 (e) The director shall receive travel expenses, in accordance with the rules of the Board of  
6 Finance, incurred in the discharge of official duties.

7 (f) The director shall employ, from time to time, such clerks and employees as are necessary  
8 for the administration of this chapter, and they shall perform such duties as the director shall  
9 assign.

10 (g) The director may be included in the state's employees' blanket bond pursuant to § 3-5-  
11 5.1.

12 (h) The director shall use the seal with the words, Director of Securities, South Dakota, and  
13 such designs as the director shall prescribe engraved thereon by which seal the director shall  
14 authenticate his signature and proceedings.

15 (i) Unlawful use of records or information. It is unlawful for the director or an officer,  
16 employee, or designee of the director to use for personal benefit or the benefit of others records  
17 or other information obtained by or filed with the director that are not public under Section  
18 607(b). This Act does not authorize the director or an officer, employee, or designee of the  
19 director to disclose the record or information, except in accordance with Section 602, 607(c),  
20 or 608.

21 (j) No privilege or exemption created or diminished. This Act does not create or diminish  
22 a privilege or exemption that exists at common law, by statute or rule, or otherwise.

23 (k) Investor education. The director may develop and implement investor education  
24 initiatives to inform the public about investing in securities, with particular emphasis on the

1 prevention and detection of securities fraud. In developing and implementing these initiatives,  
2 the director may collaborate with public and nonprofit organizations with an interest in investor  
3 education. The director may accept a grant or donation from a person that is not affiliated with  
4 the securities industry or from a nonprofit organization, regardless of whether the organization  
5 is affiliated with the securities industry, to develop and implement investor education initiatives.  
6 This subsection does not authorize the director to require participation or monetary contributions  
7 of a registrant in an investor education program.

8 Section 40. Section 602. (a) Authority to investigate. The director may:

- 9 (1) Conduct public or private investigations within or outside of this state which the  
10 director considers necessary or appropriate to determine whether a person has  
11 violated, is violating, or is about to violate this Act or a rule adopted or order issued  
12 under this Act, or to aid in the enforcement of this Act or in the adoption of rules and  
13 forms under this Act;
- 14 (2) Require or permit a person to testify, file a statement, or produce a record, under oath  
15 or otherwise as the director determines, as to all the facts and circumstances  
16 concerning a matter to be investigated or about which an action or proceeding is to  
17 be instituted; and
- 18 (3) Publish a record concerning an action, proceeding, or an investigation under, or a  
19 violation of, this Act or a rule adopted or order issued under this Act if the director  
20 determines it is necessary or appropriate in the public interest and for the protection  
21 of investors.

22 (b) Director powers to investigate. For the purpose of an investigation under this Act, the  
23 director or its designated officer may administer oaths and affirmations, subpoena witnesses,  
24 seek compulsion of attendance, take evidence, require the filing of statements, and require the

1 production of any records that the director considers relevant or material to the investigation.

2 (c) Procedure and remedies for noncompliance. If a person does not appear or refuses to  
3 testify, file a statement, produce records, or otherwise does not obey a subpoena as required by  
4 the director under this Act, the director, or any officer designated by him, may apply to the  
5 circuit court to enforce compliance, or may refer the matter to the Attorney General or the  
6 proper attorney, who may apply to the circuit court or a court of another state to enforce  
7 compliance. The court may:

8 (1) Hold the person in contempt;

9 (2) Order the person to appear before the director;

10 (3) Order the person to testify about the matter under investigation or in question;

11 (4) Order the production of records;

12 (5) Grant injunctive relief, including restricting or prohibiting the offer or sale of  
13 securities or the providing of investment advice;

14 (6) Impose a civil penalty of not more than ten thousand dollars per violation; and

15 (7) Grant any other necessary or appropriate relief.

16 (d) Application for relief. This section does not preclude a person from applying to the  
17 circuit court or a court of another state for relief from a request to appear, testify, file a  
18 statement, produce records, or obey a subpoena.

19 (e) Use immunity procedure. An individual is not excused from attending, testifying, filing  
20 a statement, producing a record or other evidence, or obeying a subpoena of the director under  
21 this Act or in an action or proceeding instituted by the director under this Act on the ground that  
22 the required testimony, statement, record, or other evidence, directly or indirectly, may tend to  
23 incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If  
24 the individual refuses to testify, file a statement, or produce a record or other evidence on the

1 basis of the individual's privilege against self-incrimination, the director may apply to the circuit  
2 court to compel the testimony, the filing of the statement, the production of the record, or the  
3 giving of other evidence. The testimony, record, or other evidence compelled under such an  
4 order may not be used, directly or indirectly, against the individual in a criminal case, except  
5 in a prosecution for perjury or contempt or otherwise failing to comply with the order.

6 (f) Assistance to securities regulator of another jurisdiction. At the request of the securities  
7 regulator of another state or a foreign jurisdiction, the director may provide assistance if the  
8 requesting regulator states that it is conducting an investigation to determine whether a person  
9 has violated, is violating, or is about to violate a law or rule of the other state or foreign  
10 jurisdiction relating to securities matters that the requesting regulator administers or enforces.  
11 The director may provide the assistance by using the authority to investigate and the powers  
12 conferred by this section as the director determines is necessary or appropriate. The assistance  
13 may be provided without regard to whether the conduct described in the request would also  
14 constitute a violation of this Act or other law of this state if occurring in this state. In deciding  
15 whether to provide the assistance, the director may consider whether the requesting regulator  
16 is permitted and has agreed to provide assistance reciprocally within its state or foreign  
17 jurisdiction to the director on securities matters when requested; whether compliance with the  
18 request would violate or prejudice the public policy of this state; and the availability of  
19 resources and employees of the director to carry out the request for assistance.

20 Section 41. Section 603. (a) Civil action instituted by director. If the director believes that  
21 a person has engaged, is engaging, or is about to engage in an act, practice, or course of business  
22 constituting a violation of this Act or a rule adopted or order issued under this Act or that a  
23 person has, is, or is about to engage in an act, practice, or course of business that materially aids  
24 a violation of this Act or a rule adopted or order issued under this Act, the director may maintain

1 an action in the circuit court to enjoin the act, practice, or course of business and to enforce  
2 compliance with this Act or a rule adopted or order issued under this Act.

3 (b) Relief available. In an action under this section and on a proper showing, the court may:

4 (1) Issue a permanent or temporary injunction, restraining order, or declaratory  
5 judgment;

6 (2) Order other appropriate or ancillary relief, which may include:

7 (A) An asset freeze, accounting, writ of attachment, writ of general or specific  
8 execution, and appointment of a receiver or conservator, that may be the  
9 director for the defendant or the defendant's assets;

10 (B) Ordering the director to take charge and control of a defendant's property,  
11 including investment accounts and accounts in a depository institution, rents,  
12 and profits; to collect debts; and to acquire and dispose of property;

13 (C) Imposing a civil penalty up to ten thousand dollars for each violation; an order  
14 of rescission, restitution, or disgorgement directed to a person that has engaged  
15 in an act, practice, or course of business constituting a violation of this Act or  
16 the predecessor act or a rule adopted or order issued under this Act or the  
17 predecessor act; and

18 (D) Ordering the payment of prejudgment and postjudgment interest; or

19 (3) Order such other relief as the court considers appropriate.

20 (c) No bond required. The director may not be required to post a bond in an action or  
21 proceeding under this Act.

22 Section 42. Section 604. (a) Issuance of an order or notice. If the director determines that  
23 a person has engaged, is engaging, or is about to engage in an act, practice, or course of business  
24 constituting a violation of this Act or a rule adopted or order issued under this Act or that a

1 person has materially aided, is materially aiding, or is about to materially aid an act, practice,  
2 or course of business constituting a violation of this Act or a rule adopted or order issued under  
3 this Act, the director may:

4 (1) Issue an order directing the person to cease and desist from engaging in the act,  
5 practice, or course of business or to take other action necessary or appropriate to  
6 comply with this Act;

7 (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a  
8 broker-dealer under Section 401(b)(1)(D) or (F) or an investment adviser under  
9 Section 403(b)(1)(C); or

10 (3) Issue an order under Section 204.

11 (b) Summary process. An order under subsection (a) is effective on the date of issuance.  
12 Upon issuance of the order, the director shall promptly serve each person subject to the order  
13 with a copy of the order and a notice that the order has been entered. The order must include a  
14 statement whether the director will seek a civil penalty or costs of the investigation, a statement  
15 of the reasons for the order, and notice that, within fifteen days after receipt of a request in a  
16 record from the person, the matter will be scheduled for a hearing. If a person subject to the  
17 order does not request a hearing and none is ordered by the director within thirty days after the  
18 date of service of the order, the order, which may include a civil penalty or costs of the  
19 investigation if a civil penalty or costs were sought in the statement accompanying the order,  
20 becomes final as to that person by operation of law. If a hearing is requested or ordered, the  
21 director, after notice of and opportunity for hearing to each person subject to the order, may  
22 modify or vacate the order or extend it until final determination.

23 (c) Procedure for final order. If a hearing is requested or ordered pursuant to subsection (b),  
24 a hearing must be held pursuant to chapter 1-26. A final order may not be issued unless the

1 director makes findings of fact and conclusions of law in a record pursuant to chapter 1-26. The  
2 final order may make final, vacate, or modify the order issued under subsection (a).

3 (d) Civil penalty. In a final order under subsection (c), the director may impose a civil  
4 penalty up to ten thousand dollars for each violation.

5 (e) Costs. In a final order, the director may charge the actual cost of an investigation or  
6 proceeding for a violation of this Act or a rule adopted or order issued under this Act.

7 (f) Filing of certified final order with court; effect of filing. If a petition for judicial review  
8 of a final order is not filed in accordance with Section 609, the director may file a certified copy  
9 of the final order with the clerk of a court of competent jurisdiction. The order so filed has the  
10 same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same  
11 manner as a judgment of the court.

12 (g) Enforcement by court; further civil penalty. If a person does not comply with an order  
13 under this section, the director may petition a court of competent jurisdiction to enforce the  
14 order. The court may not require the director to post a bond in an action or proceeding under this  
15 section. If the court finds, after service and opportunity for hearing, that the person was not in  
16 compliance with the order, the court may adjudge the person in civil contempt of the order. The  
17 court may impose a further civil penalty against the person for contempt in an amount not more  
18 than ten thousand dollars, for each violation and may grant any other relief the court determines  
19 is just and proper in the circumstances.

20 Section 43. Section 605. (a) Issuance and adoption of forms, orders, and rules. The director  
21 may:

- 22 (1) Issue forms and orders and, after notice and comment, may adopt and amend rules  
23 necessary or appropriate to carry out this Act and may repeal rules, including rules  
24 and forms governing registration statements, applications, notice filings, reports, and

1           other records;

2           (2)   By rule, define terms, whether or not used in this Act, but those definitions may not  
3           be inconsistent with this Act; and

4           (3)   By rule, classify securities, persons, and transactions and adopt different requirements  
5           for different classes.

6           (b) Findings and cooperation. Under this Act, a rule or form may not be adopted or  
7   amended, or an order issued or amended, unless the director finds that the rule, form, order, or  
8   amendment is necessary or appropriate in the public interest or for the protection of investors  
9   and is consistent with the purposes intended by this Act. In adopting, amending, and repealing  
10   rules and forms, Section 608 applies in order to achieve uniformity among the states and  
11   coordination with federal laws in the form and content of registration statements, applications,  
12   reports, and other records, including the adoption of uniform rules, forms, and procedures.

13          (c) Financial statements. Subject to Section 15(h) of the Securities Exchange Act and  
14   Section 222 of the Investment Advisers Act of 1940, the director may require that a financial  
15   statement filed under this Act be prepared in accordance with generally accepted accounting  
16   principles in the United States and comply with other requirements specified by rule adopted  
17   or order issued under this Act. A rule adopted or order issued under this Act may establish:

18          (1)   Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the  
19               Investment Advisors Act of 1940, the form and content of financial statements  
20               required under this Act;

21          (2)   Whether unconsolidated financial statements must be filed; and

22          (3)   Whether required financial statements must be audited by an independent certified  
23               public accountant.

24          (d) Interpretative opinions. The director may provide interpretative opinions or issue



1 determinations that the director will not institute a proceeding or an action under this Act against  
2 a specified person for engaging in a specified act, practice, or course of business if the  
3 determination is consistent with this Act. A fifty dollar fee is required for interpretative opinions  
4 and no action letters.

5 (e) Effect of compliance. A penalty under this Act may not be imposed for, and liability does  
6 not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule,  
7 form, or order of the director under this Act.

8 (f) Presumption for public hearings. A hearing in an administrative proceeding under this Act  
9 must be conducted in public unless the director for good cause consistent with this Act  
10 determines that the hearing will not be so conducted.

11 Section 44. Section 606. (a) Public register of filings. The director shall maintain, or  
12 designate a person to maintain, a register of applications for registration of securities;  
13 registration statements; notice filings; applications for registration of broker-dealers, agents,  
14 investment advisers, and investment adviser representatives; notice filings by federal covered  
15 investment advisers that are or have been effective under this Act or the predecessor act; notices  
16 of claims of exemption from registration or notice filing requirements contained in a record;  
17 orders issued under this Act or the predecessor act; and interpretative opinions or no action  
18 determinations issued under this Act.

19 (b) Public availability. The director shall make all rules, forms, interpretative opinions, and  
20 orders available to the public.

21 (c) Copies of public records. The director shall furnish a copy of a record that is a public  
22 record or a certification that the public record does not exist to a person that so requests. A rule  
23 adopted under this Act may establish a reasonable charge for furnishing the record or  
24 certification. A copy of the record certified or a certificate by the director of a record's

1 nonexistence is prima facie evidence of a record or its nonexistence.

2 Section 45. Section 607. (a) Presumption of public records. Except as otherwise provided  
3 in subsection (b), records obtained by the director or filed under this Act, including a record  
4 contained in or filed with a registration statement, application, notice filing, or report, are public  
5 records and are available for public examination.

6 (b) Nonpublic records. The following records are not public records and are not available  
7 for public examination under subsection (a):

8 (1) A record obtained by the director in connection with an audit or inspection under  
9 Section 411(d) or an investigation under Section 602;

10 (2) A part of a record filed in connection with a registration statement under Sections  
11 301 and 303 through 305 or a record under Section 411(d) that contains trade secrets  
12 or confidential information if the person filing the registration statement or report has  
13 asserted a claim of confidentiality or privilege that is authorized by law;

14 (3) A record that is not required to be provided to the director or filed under this Act and  
15 is provided to the director only on the condition that the record will not be subject to  
16 public examination or disclosure;

17 (4) A nonpublic record received from a person specified in Section 608(a); and

18 (5) Any social security number, residential address unless used as a business address, and  
19 residential telephone number unless used as a business telephone number, contained  
20 in a record that is filed; and

21 (6) A record obtained by the director through a designee of the director or that a rule or  
22 order under this Act determines has been:

23 (A) Expunged from the director's records by the designee; or

24 (B) Determined to be nonpublic or nondisclosable by that designee if the director

1 finds the determination to be in the public interest and for the protection of  
2 investors.

3 (c) Director discretion to disclose. If disclosure is for the purpose of a civil, administrative,  
4 or criminal investigation, action, or proceeding or to a person specified in Section 608(a), the  
5 director may disclose a record obtained in connection with an audit or inspection under Section  
6 411(d) or a record obtained in connection with an investigation under Section 602.

7 Section 46. Section 608. (a) Objective of uniformity. The director shall, in its discretion,  
8 cooperate, coordinate, consult, and, subject to Section 607, share records and information with  
9 the securities regulator of another state, Canada, a Canadian province or territory, a foreign  
10 jurisdiction, the Securities and Exchange Commission, the United States Department of Justice,  
11 the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities  
12 Investor Protection Corporation, a self-regulatory organization, a national or international  
13 organization of securities regulators, a federal or state banking and insurance regulator, and a  
14 governmental law enforcement agency to effectuate greater uniformity in securities matters  
15 among the federal government, self-regulatory organizations, states, and foreign governments.

16 (b) Policies to consider. In cooperating, coordinating, consulting, and sharing records and  
17 information under this section and in acting by rule, order, or waiver under this Act, the director  
18 shall, in its discretion, take into consideration in carrying out the public interest the following  
19 general policies:

- 20 (1) Maximizing effectiveness of regulation for the protection of investors;  
21 (2) Maximizing uniformity in federal and state regulatory standards; and  
22 (3) Minimizing burdens on the business of capital formation, without adversely affecting  
23 essentials of investor protection.

24 (c) Subjects for cooperation. The cooperation, coordination, consultation, and sharing of

records and information authorized by this section includes:

- (1) Establishing or employing one or more designees as a central depository for registration and notice filings under this Act and for records required or allowed to be maintained under this Act;
- (2) Developing and maintaining uniform forms;
- (3) Conducting a joint examination or investigation;
- (4) Holding a joint administrative hearing;
- (5) Instituting and prosecuting a joint civil or administrative proceeding;
- (6) Sharing and exchanging personnel;
- (7) Coordinating registrations under Sections 301 and 401 through 404 and exemptions under Section 203;
- (8) Sharing and exchanging records, subject to Section 607;
- (9) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (10) Formulating common systems and procedures;
- (11) Notifying the public of proposed rules, forms, statements of policy, and guidelines;
- (12) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- (13) Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

Section 47. Section 609. (a) Judicial review of orders. A final order issued by the director

1 under this Act is subject to judicial review in accordance with chapter 1-26.

2 (b) Judicial review of rules. A rule adopted under this Act is subject to judicial review in  
3 accordance with chapter 1-26.

4 Section 48. Section 610. (a) Sales and offers to sell. Sections 301, 302, 401(a), 402(a),  
5 403(a), 404(a), 501, 506, 509, and 510 do not apply to a person that sells or offers to sell a  
6 security unless the offer to sell or the sale is made in this state or the offer to purchase or the  
7 purchase is made and accepted in this state.

8 (b) Purchases and offers to purchase. Sections 401(a), 402(a), 403(a), 404(a), 501, 506, 509,  
9 and 510 do not apply to a person that purchases or offers to purchase a security unless the offer  
10 to purchase or the purchase is made in this state or the offer to sell or the sale is made and  
11 accepted in this state.

12 (c) Offers in this state. For the purpose of this section, an offer to sell or to purchase a  
13 security is made in this State, whether or not either party is then present in this state, if the offer:

- 14 (1) Originates from within this state; or  
15 (2) Is directed by the offeror to a place in this state and received at the place to which it  
16 is directed.

17 (d) Acceptances in this state. For the purpose of this section, an offer to purchase or to sell  
18 is accepted in this state, whether or not either party is then present in this state, if the acceptance:

- 19 (1) Is communicated to the offeror in this state and the offeree reasonably believes the  
20 offeror to be present in this state and the acceptance is received at the place in this  
21 state to which it is directed; and  
22 (2) Has not previously been communicated to the offeror, orally or in a record, outside  
23 this state.

24 (e) Publications, radio, television, or electronic communications. An offer to sell or to

1 purchase is not made in this state when a publisher circulates or there is circulated on the  
2 publisher's behalf in this state a bona fide newspaper or other publication of general, regular,  
3 and paid circulation that is not published in this state, or that is published in this state but has  
4 had more than two thirds of its circulation outside this state during the previous twelve months  
5 or when a radio or television program or other electronic communication originating outside this  
6 state is received in this state. A radio or television program, or other electronic communication  
7 is considered as having originated in this state if either the broadcast studio or the originating  
8 source of transmission is located in this state, unless:

9 (1) The program or communication is syndicated and distributed from outside this state  
10 for redistribution to the general public in this state;

11 (2) The program or communication is supplied by a radio, television, or other electronic  
12 network with the electronic signal originating from outside this state for  
13 redistribution to the general public in this state;

14 (3) The program or communication is an electronic communication that originates  
15 outside this state and is captured for redistribution to the general public in this state  
16 by a community antenna or cable, radio, cable television, or other electronic system;  
17 or

18 (4) The program or communication consists of an electronic communication that  
19 originates in this state, but which is not intended for distribution to the general public  
20 in this state.

21 (f) Investment advice and misrepresentations. Sections 403(a), 404(a), 405(a), 502, 505, and  
22 506 apply to a person if the person engages in an act, practice, or course of business  
23 instrumental in effecting prohibited or actionable conduct in this state, whether or not either  
24 party is then present in this state.

1       Section 49. Section 611. (a) Signed consent to service of process. A consent to service of  
2       process complying with Section 611 required by this Act must be signed and filed in the form  
3       required by a rule or order under this Act. A consent appointing the director the person's agent  
4       for service of process in a noncriminal action or proceeding against the person, or the person's  
5       successor or personal representative under this Act or a rule adopted or order issued under this  
6       Act after the consent is filed, has the same force and validity as if the service were made  
7       personally on the person filing the consent. A person that has filed a consent complying with  
8       this subsection in connection with a previous application for registration or notice filing need  
9       not file an additional consent.

10       (b) Conduct constituting appointment of agent for service. If a person, including a  
11       nonresident of this state, engages in an act, practice, or course of business prohibited or made  
12       actionable by this Act or a rule adopted or order issued under this Act and the person has not  
13       filed a consent to service of process under subsection (a), the act, practice, or course of business  
14       constitutes the appointment of the director as the person's agent for service of process in a  
15       noncriminal action or proceeding against the person or the person's successor or personal  
16       representative.

17       (c) Procedure for service of process. Service under subsection (a) or (b) may be made by  
18       providing a copy of the process to the office of the director, but it is not effective unless:

19       (1)    The plaintiff, which may be the director, promptly sends notice of the service and a  
20              copy of the process, return receipt requested, to the defendant or respondent at the  
21              address set forth in the consent to service of process or, if a consent to service of  
22              process has not been filed, at the last known address, or takes other reasonable steps  
23              to give notice; and

24       (2)    The plaintiff files an affidavit of compliance with this subsection in the action or

1 proceeding on or before the return day of the process, if any, or within the time that  
2 the court, or the director in a proceeding before the director, allows.

3 (d) Service in administrative proceedings or civil actions by director. Service pursuant to  
4 subsection (c) may be used in a proceeding before the director or by the director in a civil action  
5 in which the director is the moving party.

6 (e) Opportunity to defend. If process is served under subsection (c), the court, or the director  
7 in a proceeding before the director, shall order continuances as are necessary or appropriate to  
8 afford the defendant or respondent reasonable opportunity to defend.

9 Section 50. Section 612. If any provision of this Act or its application to any person or  
10 circumstances is held invalid, the invalidity does not affect other provisions or applications of  
11 this Act that can be given effect without the invalid provision or application, and to this end the  
12 provisions of this Act are severable.

13 Section 51. Section 701. This Act, takes effect on July 1, 2004.

14 Section 52. Section 702. That §§ 47-31A-101 to 47-31A-420, inclusive, be repealed.

15 Section 53. Section 703. (a) Applicability of predecessor act to pending proceedings and  
16 existing rights. The predecessor act exclusively governs all actions or proceedings that are  
17 pending on the effective date of this Act or may be instituted on the basis of conduct occurring  
18 before the effective date of this Act, but a civil action may not be maintained to enforce any  
19 liability under the predecessor act unless instituted within any period of limitation that applied  
20 when the cause of action accrued or within five years after the effective date of this Act,  
21 whichever is earlier.

22 (b) Continued effectiveness under predecessor act. All effective registrations under the  
23 predecessor act, all administrative orders relating to the registrations, rules, statements of policy,  
24 interpretative opinions, declaratory rulings, no action determinations, and conditions imposed



1 on the registrations under the predecessor act remain in effect while they would have remained  
2 in effect if this Act had not been enacted. They are considered to have been filed, issued, or  
3 imposed under this Act, but are exclusively governed by the predecessor act.

4 (c) Applicability of predecessor act to offers or sales. The predecessor act exclusively  
5 applies to an offer or sale made within one year after the effective date of this Act pursuant to  
6 an offering made in good faith before the effective date of this Act on the basis of an exemption  
7 available under the predecessor act.

8 Section 54. That § 1-16A-59 be amended to read as follows:

9 1-16A-59. For purposes of chapter ~~47-31A and any amendment thereto and substitution~~  
10 ~~therefor~~ 47-31B, bonds issued by the authority ~~shall be~~ are deemed to be securities issued by a  
11 public instrumentality of the State of South Dakota.

12 Section 55. That § 4-4-4.3 be amended to read as follows:

13 4-4-4.3. There ~~shall be~~ is established within the state treasury the securities operating fund  
14 and the insurance operating fund, into which shall be deposited all fees received by each  
15 division. All moneys in the funds created by this section shall be budgeted and expended in  
16 accordance with the provisions of Title 4 on warrants drawn by the state auditor on vouchers  
17 approved by the secretary of the Department of Revenue and Regulation. Expenditures from  
18 these funds may be made only to pay the necessary expenses of purposes specified in chapters  
19 37-5A, 37-25A, ~~47-31A~~ 47-31B, 47-33, and Title 58.

20 Section 56. That § 5-12-55 be amended to read as follows:

21 5-12-55. The corporation is hereby declared to be performing a public function on behalf  
22 of the state and to be a public instrumentality of the state. The income of the authority and the  
23 corporation, and all properties at any time owned by the authority and the corporation, are  
24 exempt from all taxation in the State of South Dakota. In addition, the corporation is exempt

1 from all filing, reporting, and similar requirements otherwise applicable to nonprofit and other  
2 corporations.

3 For purposes of chapter ~~47-31A and any amendment thereto and substitution therefor~~ 47-  
4 31B, bonds, notes, certificates, or other obligations issued, incurred or created by the  
5 corporation under §§ 5-12-48 to 5-12-60, inclusive, ~~shall be~~ are deemed to be securities issued  
6 by a public instrumentality of the State of South Dakota.

7 Section 57. That § 6-8B-69 be amended to read as follows:

8 6-8B-69. Any credit enhancement obligation, any agreement or other arrangement related  
9 thereto, and any anticipation note authorized hereunder shall be exempt from registration under  
10 chapter ~~47-31A~~ 47-31B.

11 Section 58. That subdivision (4) of § 10-43-1 be amended to read as follows:

12 (4) "Financial institution," any banking institution or savings and loan association  
13 organized under the laws of the United States and located or doing business in this  
14 state; any bank, savings and loan association, mutual saving bank, or trust company,  
15 organized under the laws of this state or of any other state, district, territory, or  
16 country, doing business within this state; any person licensed in this state pursuant  
17 to chapter 54-4, the installment repayment small loan and consumer finance law; and  
18 any person in the business of buying loans, notes, or other evidences of debt except  
19 those persons registered as broker-dealers pursuant to chapter ~~47-31A~~ 47-31B; and  
20 persons in the business of making installment repayment and open-end loans which  
21 may be unsecured or secured by real or personal property, which loans are in an  
22 aggregate amount exceeding five hundred dollars, which are repaid in two or more  
23 installment payments or one lump sum payment extending over a time exceeding  
24 thirty days from the day the loan was made except where the loan is made by the

1 person selling the property, incidental to the sale of the property and where the seller  
2 is primarily in the business of selling such real or personal property or except where  
3 the loan is made to a related corporation and the primary business of these related  
4 corporations is the production and sale of tangible personal property or where the  
5 loan is made in the form of an advance to secure the production of equipment to be  
6 obtained by the lender or to finance a joint venture between the lender and others  
7 which has been formed to produce and sell tangible personal property;

8 Section 59. That § 11-11-96 be amended to read as follows:

9 11-11-96. For the purposes of chapter ~~47-31A and any amendments thereto and substitution~~  
10 ~~therefor~~ 47-31B, bonds issued by the authority ~~shall be~~ are deemed to be securities issued by a  
11 public instrumentality of the State of South Dakota.

12 Section 60. That § 25-7A-56 be amended to read as follows:

13 25-7A-56. A state agency or board may not issue or renew the professional, sporting, or  
14 recreational license, registration, certification, or permit of any applicant after receiving notice  
15 from the Department of Social Services that the applicant has support arrearages in the sum of  
16 one thousand dollars or more, unless the applicant first makes satisfactory arrangements with  
17 the Department of Social Services for payment of any accumulated arrearages. An applicant  
18 who disputes a determination by the Department of Social Services that the applicant has  
19 support arrearages of one thousand dollars or more shall, upon request, be given a due process  
20 hearing by the department. Upon recommendation by the department, the licensing agency or  
21 board may issue a temporary license, registration, certification, or permit to the applicant  
22 pending final resolution of the due process hearing. The department may promulgate rules  
23 pursuant to chapter 1-26 to implement the provisions of this section.

24 The term professional license, registration, certification, or permit as specified by this

1 section includes appraisers as specified in chapter 36-21B; abstractors as specified in chapter  
2 36-13; accountants as specified in chapter 36-20A; barbers as specified in chapter 36-14;  
3 chiropractors as specified in chapter 36-5; cosmetologists as specified in chapter 36-15;  
4 counselors as specified in chapter 36-32; dentists and dental hygienists as specified in chapter  
5 36-6A; electricians as specified in chapter 36-16; engineers, architects, and surveyors as  
6 specified in chapter 36-18; embalmers and funeral directors as specified in chapter 36-19; nurses  
7 as specified in chapter 36-9; nurse practitioners and nurse mid-wives as specified in chapter  
8 36-9A; physical therapists as specified in chapter 36-10; medical assistants as specified in  
9 chapter 36-9B; hearing aid dispensers as specified in chapter 36-24; physicians and surgeons  
10 as specified in chapter 36-4; physician's assistants as specified in chapter 36-4A; advanced life  
11 support personnel as specified in chapter 36-4B; nursing facility administrators as specified in  
12 chapter 36-28; optometrists as specified in chapter 36-7; pharmacists as specified in chapter  
13 36-11; plumbers as specified in chapter 36-25; podiatrists as specified in chapter 36-8;  
14 psychologists as specified in chapter 36-27A; real estate brokers and salesmen as specified in  
15 chapter 36-21A; social workers as specified in chapter 36-26; veterinarians as specified in  
16 chapter 36-12; insurance brokers, agents, and solicitors as specified in chapter 58-30; teachers  
17 and administrators as specified in chapters 13-42 and 13-43; attorneys as specified in chapter  
18 16-16; securities agents, securities brokers, investment advisers, or investment adviser  
19 representatives as specified in chapter ~~47-31A~~ 47-31B; pilots as specified in chapter 50-11; day  
20 care providers as specified in chapter 26-6; gaming employees as specified in chapter 42-7B;  
21 and law enforcement officers as specified in chapter 23-3. The state agencies or boards which  
22 govern the professions, recreational licenses, and occupations listed in this paragraph may adopt  
23 rules pursuant to chapter 1-26 to implement the provisions of this section for their particular  
24 profession or occupation.

1       Section 61. That § 25-7A-56.9 be amended to read as follows:

2       25-7A-56.9. The department shall enter into agreements with any financial institution  
3       conducting business within the state whereby the financial institution shall, on a quarterly basis,  
4       provide to the department the name, record address, social security number, or other taxpayer  
5       identification number, and other identifying information requested by the department for each  
6       obligor who owes past-due child support, and who maintains an account at the financial  
7       institution. Every financial institution shall also comply with any lien, levy, or order for  
8       withholding of income issued by the department against any account.

9       A financial institution is not liable to any person or entity for release or disclosure of any  
10      information required herein, and is not liable for encumbering or surrendering to the department  
11      any assets held by the financial institution and owned by the obligor. A financial institution is  
12      not liable to any person or entity for any other action taken in good faith by the institution to  
13      comply with the requirements of this section. Any information obtained by any Title IV-D  
14      agency pursuant to this section is confidential in nature and may be disclosed only for the  
15      purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support  
16      obligation.

17      As used in this section, financial institution includes any financial institution as defined in  
18      subdivision 10-43-1(4), any institution regulated by chapter ~~47-31A~~ 47-31B, and any other  
19      depository institution, credit union, benefit association, insurance company, safe deposit  
20      company, bond fund, money market mutual fund, and any mutual fund of any kind or character.  
21      The term, account, as used in this section includes any demand deposit account, checking  
22      account, negotiable withdrawal order account, savings account, time deposit account, money  
23      market or any type of mutual fund account, and intangible property as defined in subdivision  
24      43-41B-1(10).

1 Section 62. That § 37-5A-14 be amended to read as follows:

2 37-5A-14. The registration requirement imposed by § 37-5A-6 ~~shall~~ do not apply to the  
3 following:

- 4 (1) Any transaction by an executor, administrator, sheriff, receiver, trustee in bankruptcy,  
5 guardian or conservator;
- 6 (2) Any offer or sale to a banking organization, financial organization or life insurance  
7 corporation within the meanings given these terms by chapters 51A-1, 52-1, and  
8 58-1; or
- 9 (3) Securities currently registered in this state pursuant to chapter ~~47-31A~~ 47-31B.

10 Section 63. That subdivision (4) of § 37-25A-2 be amended to read as follows:

- 11 (4) Any offer or sale of a business opportunity registered pursuant to chapter ~~47-31A~~ 47-  
12 31B;

13 Section 64. That subdivision (4) of § 37-25A-3 be amended to read as follows:

- 14 (4) Any offer or sale of a business opportunity if the purchaser is a bank, savings and  
15 loan association, trust company, insurance company, credit union, or investment  
16 company as defined by the Investment Company Act of 1940, pension or profit  
17 sharing trust, or other financial institution or institutional buyer or a dealer registered  
18 pursuant to chapter ~~47-31A~~ 47-31B, if the purchaser is acting for itself or in a  
19 fiduciary capacity;

20 Section 65. That § 47-21-77 be amended to read as follows:

21 47-21-77. The provisions of the Uniform Securities Act, chapter ~~47-31A~~, shall chapter 47-  
22 31B do not apply to any note, bond or other evidence of indebtedness issued by any cooperative  
23 pursuant to this chapter to the United States of America or any agency or other instrumentality  
24 thereof, to any member of such cooperative, or to any mortgage, deed of trust, or other

1 instrument executed to secure the same. ~~The Uniform Securities Act Chapter 47-31B~~ does not  
2 apply to the issuance of membership certificates or any other evidence of member interest by  
3 any cooperative or any such foreign corporation.

4 Section 66. That § 58-28-31 be amended to read as follows:

5 58-28-31. The director ~~shall have~~ has sole authority to regulate the issuance and sale of  
6 variable contracts and promulgate rules to carry out the purposes and provisions of this chapter.  
7 The Division of Securities may, upon request by the director, review the underlying investments  
8 in securities of variable contracts. The Division of Securities may require filing a disclosure  
9 document with the division of securities pursuant to chapter ~~47-31A~~ 47-31B.

10 Section 67. That § 58-33-90 be amended to read as follows:

11 58-33-90. No insurance producer may offer or sell any security in this state unless the  
12 insurance producer is properly registered or exempt from registration pursuant to chapter  
13 ~~47-31A~~ 47-31B.

14 Section 68. That § 58-33-91 be amended to read as follows:

15 58-33-91. No insurance producer may offer or sell any security in this state unless the  
16 security is registered or exempt from registration pursuant to chapter ~~47-31A~~ 47-31B.